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ABSTRACT

This handbook explains the legal principles underlying the Illinois public education system, thereby providing teachers, administrators, and school board members with an understanding of the nature of the public school as a social and governmental institution. It also considers the legal status of Illinois teachers by defining their rights, duties, and obligations. After an introductory overview of school law, chapter 2, "Education in the Governmental Structure," addresses the responsibility of various levels of government for education. Chapter 3, "The Purpose of Public Education," delineates the respective responsibilities of parents and the state for the education of children and discusses the legal implications of the idea that education is a function of the state. Chapter 4 describes the organizational structure of the Illinois Public School System at the state, intermediate, and local levels. Chapter 5 specifically addresses the legal status of teachers under Illinois statutes, while chapters 6, 7, 8, and 9 delineate state laws governing teacher certification, teacher contracts, teacher tenure, and teacher retirement benefits, respectively. Chapter 10 is a discussion of tort liability of school districts and school employees, and chapter 11 lists miscellaneous statutory responsibilities, rights, and limitations of teachers. The final chapter addresses financial facts that teachers need to know, with respect to school budgets, taxes, school district bankruptcy, bonds, surplus funds, and state and federal financial support for schools. Appended is a resource equalizer formula for state financial aid. (TE)

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Law, Finance, and the Teacher in Illinois

— A Handbook for Teachers, Administrators, and School Board Members

Third Edition

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Law, Finance, and the Teacher in Illinois

— A Handbook for Teachers, Administrators, and School Board Members

BY

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"Certainly the cause of public education demands competent teachers. . . . Should the school board be aware of the incompetency of a teacher employed in its school system and fail to institute proper dismissal proceedings, it would then be derelict in its duty. The . . . school board has the authority and obligation then of determining the competency or incompetency of the teachers employed in its school system. . . ."—*Singleton* v. *Iberville Parish School Board*, 136 So. (2d) 809 (La.) (1961).

Preface

Since the courts constantly refer to the heritage of the public schools as they arrive at decisions which involve the schools, it is important for teachers and prospective teachers to comprehend the totality of the educational process, including the nature of the public schools and the purpose of public education, as a basis for understanding the law.

Thus, to that end, the authors have strived to combine their knowledge of the law and their understanding of education and then to show how the two interact. Court decisions, the constitutions of both the federal and state governments, and statutes enacted by the Illinois General Assembly are the primary sources from which data have been obtained.

Then, the real goal of Law, Finance, and the Teacher in Illinois is to make teachers and prospective teachers aware of the legal and financial aspects involved in the educational process, thereby helping experienced teachers to become more efficient practitioners and helping both beginning and experienced teachers to avoid legal pitfalls. However, once trouble brews, there is no substitute for an attorney.

Lee O. Garber
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CHAPTER I

Introduction

"Teachers of the public schools being the important element of our population that they are, the sooner and more completely they are advised of their rights or lack of them, the better."—*Woods* v. *Reilly*, 147 Tex. 586, 218 S.W.2d 437 (1949).

Why Study School Law?

To the question "Why should the teacher know about school law?" the answer should be clear. Teachers, like members of other professions, should be aware of the principles of law that relate primarily to their profession. Only when members of a profession are aware of the legal rights, duties, and obligations of its practitioners and their relationships to society and other members of that profession can such persons perform the appropriate professional responsibilities satisfactorily. Teachers are no exception. Just as the student of medicine is given specialized instruction in "medical jurisprudence" and the student of nursing is given specialized instruction in "nursing jurisprudence," so the student preparing to be a teacher should be given specialized instruction in "teaching jurisprudence," or "school law."

It might even be argued that a knowledge of law, as it relates to his or her profession, is more important to the prospective teacher than to the prospective physician or nurse, since teaching, more than any other profession, has its roots in the law. The teacher--i.e., the public school teacher--is a creature of the law. The teacher is an employee of government, engaged in carrying out a governmental function. The school that employs the teacher is an agency of society, created by society, for the purpose of promoting the welfare of society by educating the child who is the unit of society. It is through the study of school law that the teacher comes to appreciate society's stake in public education and the importance of public schools in the American social order.

Purpose of This Publication

This book has been written especially for teachers in Illinois. It attempts to explain the system of public education as it exists in Illinois, thereby affording teachers an understanding of the nature of the public school as a social and governmental institution. This is essential because courts, whose judicial pronouncements have the effect of law, constantly refer to this matter when arriving at their decisions regarding questions that relate to the purpose, structure, and personnel of public education. It also considers the legal status of Illinois teachers by defining their rights, duties, and obligations. Thus, by presenting the most important principles of law as they relate to schools and school districts--principles that should be essential information for all well-informed teachers, as well as those that should be the common knowledge of school ad-

ministrators and school board members, it seeks to make teachers intelligent about the legal aspects of their positions so that they may have an understanding of the legal implications of the various courses of action open to them as they carry out their duties.

Nature and Sources of Law

The term "law" as it is generally used may be defined as an expression of public policy, regardless of whether that policy is expressed by the legislative, executive, or judicial branch of government and regardless of whether it is expressed by the federal, state, or local units of government. In other words, "law," when used as a general term, usually refers to a body of pertinent legal principles regardless of their source; and "school law" refers to those principles especially applicable to education. Thus, it is evident that the law of any aspect of government includes far more than legislative enactments which, in the minds of many, constitute, or comprise, the law. Actually, since law is an expression of public policy, law is found in state and federal constitutional provisions, legislative enactments, and judicial pronouncements. This, it must be kept in mind, is certainly true of school law. In fact, some of the most important principles of school law are to be found in the judicial pronouncements at both the federal and state levels. For example, when the United States Supreme Court, in the famous Brown case, 1/ held that it was unconstitutional to segregate pupils in public schools on the basis of race and/or color, the Court was actually setting down a legal principle, and the principle was just as binding as it would have been if handed down by the legislative branch of government. In other words, this expression of what public policy is with respect to the matter in question is a statement of the law on that subject.

In light of what has been said, it is clear that there are, generally speaking, three sources of law: (1) statutes enacted by the legislative branches of government, both state and federal; (2) the constitutions, both state and federal; and (3) the pronouncements of the courts. This latter type of law is often referred to as "common law," or, more accurately, as "court-made law," or "judge-made law." This book is equally concerned with all three types of law, but its major contribution may well rest on the considerable emphasis which it places on the common, or court-made, law. The

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1. Brown v. Board of Education, 349 U.S. 294, 75 S.Ct. 753 (1954).

constituional law can, without too much difficulty, be found by reading the federal and state constitutions, and the statutory law can be located by searching through the table of contents of The School Code of Illinois, a volume that contains enactments of the Illinois legislature. Legal principles growing out of court-made laws are not so easily located since, to discover them, one must search through the many relevant court decisions that have been rendered by the higher state and federal courts. But it is not enough to search through the Illinois and federal court decisions. One should search through those decisions rendered by the higher courts of all 50 states. This is because some questions may never have been litigated in Illinois, although they have been in other states. While the decisions of the state courts in the other 49 states are not necessarily binding on Illinois courts, Illinois courts will take judicial cognizance of any decisions cited to them and may, if they see fit, follow them. In other words, decisions of other state courts may have precedential value.

To some persons, the idea that some of our law is made by the courts--representatives of the judicial branch of government--rather than by the legislature, comes as more or less of a surprise. In this connection, it should also be pointed out that some individuals appear to be greatly concerned not only because the courts, through their pronouncements, determine what the law is, but also because, once having enunciated a legal principle, they are free to change their thinking at any time they see fit, thereby altering or changing the law. Commenting on this, the Supreme Court of Iowa said:

> It is true that the law should not be, and is not, static; it should grow and develop with economic, political, and cultural conditions which surround it. This, however, does not mean that it should not generally be definite and settled. The rule of stare decisis [the doctrine that legal principles embodied in judicial decisions should be accepted as authoritative in cases with factual backgrounds similar to those of cases in which they were enunciated] has its basis in something stronger than the thought that courts should follow hide-bound precedent without regard to justice or equity. It derives from the consideration that when the courts have fully and fairly considered a proposition and have decided it, only the most pressing reasons should require, or in fact even permit, an opposite holding. Lawyers and clients

> have a right to know what the law is, and to order their affairs accordingly. 2/

A New York court, in commenting on the same matter, said:

> The law is not merely a composition of cold type; it is a living organism which moulds itself to meet the needs of an ever changing civilization. 3/

And a New Jersey court said:

> It is to the credit and the glory of the common law that it has always had within itself the seed of change, keeping pace with the march of the years and the advance of thought. Wherever it has lagged it has been because of the conservatism which was hesitant to recognize the changing times and the need to revise the law's precedents. But always and eventually the common law caught up with the times and molded itself to the newer needs for the public good.... Emancipation from earlier constricting attitudes and holdings is part of the process of judicial growth and public service. 4/

What all of this means is that law is not static; nor should it be. Like all aspects of the social order, it is and must be changing. Without change it would be little more than a straightjacket, confining society within the narrow limits of a social order that soon becomes outmoded. The willingness of the courts to change their thinking with respect to questions of educational import has been particularly evident in recent years.

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2. Swan Lake Consolidated School District v. Consolidated School District of Dolliver, 58 N.W.2d 349 (1953).
3. App. of Fallon, 178 N.Y.S.2d 459 (1958).
4. A. P. Smith Mfg. Co. v. Barlow, 26 N.J.S. 106, 97 A.2d 186 (1953).

CHAPTER II

Education in the Governmental Structure

"... the whole subject of the maintenance and support of common schools has ever been regarded in this State as one not only of public usefulness, but of public necessity and one which the State in its sovereign character, was bound to sustain."—*Williams* v. *School District No. 6*, 33 Vt. 271 (1861).

Introduction

Many citizens--educators as well as lay persons--have little understanding of the origin, function, and organization of public schools. This is especially regrettable in the case of teachers, since it would seem that some basic understanding of the agency that employs them would be essential to the proper performance of their duties.

Public schools have been a part of our cultural pattern from earliest times. In fact, they have been with us so long that they are taken for granted, and little thought is given to their origin, purpose, or function. As early as 1642, Massachusetts enacted legislation that related to the education of children. It required the governing officers of towns to make certain that parents and masters attended to the education of the children under their control and trained them "in learning and labor and other employments ... profitable to the commonwealth." Five years later (1647), the General Court went one step further and enacted a law that had additional implications for public education. This law required each town that had 50 or more householders to maintain a school. In these two laws is to be found the germ of the public school idea. Thus, it is seen that the public school has been a part of the social and governmental tradition of this country for over three centuries. No wonder that it is accepted without question and with little curiosity concerning its origin and purpose.

When the Soviet Union succeeded in launching its first satellite, our complacency with respect to education received a severe shock. Attention was immediately directed toward education and the educational system. Not since colonial days, probably, had the United States become so conscious that the public school system is, in reality, the best instrument for guaranteeing this nation's continued existence. Without doubt, our greatest contribution to social development and welfare, and to the furtherance of the idea of freedom of the individual, is our public school system. It is unique. No other nation has, as yet, developed a public school system comparable to it. It provides education for all the children of all the people. Visitors from abroad never cease to marvel at it and to comment on it. Many return to their homes firm in the conviction that it is America's crowning achievement--the secret of our greatness. Historians have, on numerous occasions, given major credit to the public schools for the success of the greatest social experiment ever undertaken--the development of a democratic way of life.

Education a Governmental Function

Education and Government.--To understand the nature, operation, administration, and organization of the public school system, one must first understand the place the public schools occupy in the American social and governmental structure. From what has already been said, it is evident that the maintenance of public schools is a function of government. In this connection, a Louisiana court said:

> Education is one of the functions of government; and the public school system is a department of the government. Education insures domestic tranquility, provides for the common defense, promotes the general welfare, and it secures the blessings of liberty to ourselves and our posterity. 1/

A decision rendered by a court of appeals in Kentucky is also significant in this connection. Among other things, the court said:

> ... [public education] is regarded as an essential to the preservation of liberty--as forming one of the first duties of a democratic government. The place assigned it in the deliberate judgment of the American people is scarcely second to any. If it is essentially a prerogative of sovereignty to raise troops in time of war, it is equally so to prepare each generation of youth to discharge the duties of citizenship in time of peace and war.... 2/

This concept, that education is a function of government, is basic to many landmark decisions rendered by our higher courts. It was well stated in the Brown case, which declared that segregation of schools on the basis of race was unconstitutional, 3/ and it entered into the thinking of the Supreme Court of California in the Serrano case, which held unconstitutional the system of financing education in California. 4/ Likewise, the Supreme Court of the United

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1. Herold v. Parish Board of School Directors, 136 La. 1034, 68 So. 116 (1915).
2. City of Louisville v. Commonwealth, 134 Ky. 488, 121 S.W. 411 (1909).
3. Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686 (1954).
4. Serrano v. Priest, 96 Cal.Rptr. 601 (1971).

States recognized this principle of law in its decision in the Rodriguez case, which upheld the constitutionality of the Texas plan of financing education. 5/

Most people, recognizing that our public schools are provided for by law and are subject to law--i.e., that our schools are agencies of government and that education is a function of government--are not certain as to the extent to which each level of government--local, state, national--is or should be responsible for the exercise of this function. The answer to this question can be found in an understanding of the American system of government.

The American System of Government.--Our form of government is generally denominated "federalism." By this is meant there is a division of powers between the national government and the governments of the 50 constituent states. At times it is not clear which powers belong to the national government and which to the state governments.

When the individual colonies separated from England, each became a separate nation or country possessed of sovereignty. Later, when these colonies found it necessary to form some sort of alliance for their mutual protection, the United States, as a nation, came into existence. Its creation resulted from the adoption of the Constitution, which provided the framework for its government. This government, it is said, is one of enumerated powers. In creating the nation, the states, which were absolutely sovereign, each agreed to surrender sovereignty over certain affairs and vest it in the national government. For example, each state agreed to divest itself of the right to coin money and to vest this power in the federal government. Because the colonies were sovereign, the states continued to remain sovereign in government. And the federal government became a government possessed of only those powers actually enumerated in the Constitution, which was approved by the individual states. The federal government has no inherent authority. For Congress to act, it must look to the federal Constitution to see if it is possessed of the power to do so or to see if the power in question is implied within some enumerated power. In the Tenth Amendment to the Constitution of the United States is found the rule for determining which powers belong to the states and which, by indirection, belong to the federal government. This Amendment reads as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

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5. San Antonio Independent School District v. Rodriguez, 93 S.Ct. 1278 (1973).

Local units of government, such as municipal corporations and quasi-municipal corporations, are creatures of the state. They have their origins in legislative enactments. Being creatures of the state, they look to the statutes for their powers. In general, municipalities and quasi-municipalities are held to have only those powers specifically granted to them by statute, those necessarily implied therefrom, and those that are essential to carrying out the purpose for which they were created.

Thus, it is evident that in our form of government the states are sovereign and that both the federal and local governments must look to the law as found in the Constitution and the statutes to discover the nature of their powers. In other words, a state, as the possessor of sovereignty, has all the powers of an absolute unrestrained monarch except those it has surrendered to the federal government. On the other hand, the federal government has only those powers specifically delegated to it by the states and those necessarily implied therefrom. The local units of government also must look to the statutes and the Constitution to see if the powers they desire to exercise have been specifically granted to them or if they are necessarily implied from those that have been granted.

Responsibility of Various Levels of Government for Education

Having considered the scheme of American government, we are now in a better position to consider the extent to which each level of government--federal, state, and local--is responsible for providing for free public education.

The Federal Government and Education.--Applying the rule laid down by the Tenth Amendment to the Constitution of the United States, we may conclude that if the federal government has any authority over education, it is because of implied powers, as no express powers over education have been specifically delegated to it by the states. The two words "schools" and "education" are not to be found in the United States Constitution. While the authority of the federal government over education has never been the direct subject of litigation, it seems certain that the federal government is generally thought to be without authority to create, maintain, and control a public school system.

The matter is not quite this simple, however, since, as just stated, the federal government's authority over schools may be found implied within some specific section of the United States Constitution. A study of that document indicates that the only clause from which positive powers with

respect to education can be implied is the general-welfare clause (Art. I, Sec. 8). This clause, which enumerates the powers granted to Congress, says, in part: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States...." The actual meaning of this clause is still not quite clear. It was not until 1936 that the Supreme Court of the United States interpreted this in a case involving the constitutionality of some New Deal legislation. While that legislation has no relationship to education, the interpretation provides us with guidelines regarding the implications of the general-welfare clause. 6/

A brief consideration of this case will help to clarify the meaning of this clause. In the first place, it should be noted that the case was brought to question the constitutionality of the Agricultural Adjustment Act, which provided for a processing tax to raise funds to be used in regulating agricultural production. Its constitutionality was attacked on the grounds that Congress, in dealing with agriculture, was dealing with a matter over which it had no authority. While admitting that Congress had no specifically enumerated power to deal with agriculture, the court defended the constitutionality of the Act on the grounds that, under the general-welfare clause, Congress had the power it was attempting to exercise. As a result, the Court was called upon to interpret the general-welfare clause. In so doing, it first differentiated between two different interpretations--the Madisonian and Hamiltonian concepts. In part, it said:

> The question is not what power the Federal Government ought to have but what powers in fact have been given by the people.... The federal union is a government of delegated powers. It has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted....
>
> .....
>
> ... the Government asserts that warrant is found in ... [the general-welfare] clause for the adoption of the Agricultural Adjustment Act. The argument is that Congress may appropriate and authorize the spending of moneys for the "general welfare"; that the phrase should be liberally construed to cover anything conducive to national

6. United States v. Butler, 297 U.S. 1 (1936).

> welfare; that decision as to what will promote such welfare rests with Congress alone....
>
> .....
>
> Since the foundation of the Nation sharp differences of opinion have persisted as to the true interpretation of the phrase ["general welfare"]. Madison asserted it amounted to no more than a reference to the other powers enumerated in the subsequent clauses of the same section; that, as the United States is a government of limited and enumerated powers, the grant of power to tax and spend for the general national welfare must be confined to the enumerated legislative fields committed to the Congress. In this view the phrase is mere tautology.... Hamilton, on the other hand, maintained the clause confers a power separate and distinct from those later enumerated, is not restricted in meaning by the grant of them, and Congress consequently has a substantive power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States.... This court has noticed the question, but has never found it necessary to decide which is the true construction....

The Court then placed itself on record as favoring the Hamiltonian interpretation. In doing so it noted, however, that the power to tax is not unlimited. In applying this reasoning to the question before it, the Court held the act in question was unconstitutional since Congress had not been granted any specific power over agriculture. Commenting further, it said: "The power of taxation, which is expressly granted, may, of course, be adopted as a means to carry into operation another power also expressly granted. But resort to the taxing power to effectuate an end which is not legitimate, not within the scope of the Constitution, is obviously inadmissible." And then, more to the point, "Congress has no power to enforce its commands on the farmer to the ends sought by the Agricultural Adjustment Act. It must follow that it may not indirectly accomplish those ends by taxing and spending to purchase compliance."

The following year the Supreme Court found it necessary to consider the general-welfare clause further in Helvering v. Davis. 7/ This case concerned the constitutionality of

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7. Helvering v. Davis, 301 U.S. 619 (1937).

the Social Security Act. Although the Court had held that the Agricultural Adjustment Act was unconstitutional, since Congress had no enumerated power to control agriculture, and its actions in attempting to do so did not come within the purview of the general-welfare clause, it here upheld the constitutionality of the Social Security Act, even though no specific power could be found to warrant Congress' enactment of legislation in this field. Although one might be tempted to conclude that the Court in the Helvering case reversed the position it had taken in Butler, it made it quite clear that it was not doing so--that it still followed the same line of reasoning in interpreting the general-welfare clause but came to a different conclusion solely because of a different set of facts. How it differentiated between the facts in these two cases is illustrated by the following quotation:

> Congress may spend money in aid of the "general-welfare." ...There have been great statesmen ... who have stood for other views. We will not resurrect the contest. It is now settled by decision. United States v. Butler ... The conception of the spending power advocated by Hamilton ... has prevailed over that of Madison.... Yet difficulties are left when the power is conceded. The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large. The discretion, however, is not confined to the courts. This discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment.... Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times.
>
> .....
>
> Congress did not improvise a judgment when it found that the award of old age benefits would be conducive to the general welfare....
>
> The problem is plainly national in area and dimension....
>
> Whether wisdom or unwisdom resides in the scheme of benefits ... it is not for us to say. The answer to such inquiries must come from

> Congress, not the courts. Our concern here is with power, not wisdom....

More recently, however, some limitation has been recognized in the power of Congress to enact laws which abridge the power of the individual states. In 1974, Congress amended the Fair Labor Standards Act of 1938 and extended the federal minimum wage and maximum hour provisions to almost all public employees of the states and their various political subdivisions. [80 Stat. 831, 29 U.S.C. Sec. 203 (d)]. The Supreme Court recognized the authority of Congress to enact laws regulating individual businesses necessarily subject to the dual sovereignty of both the federal and state governments in which they reside. It was another matter, however, with respect to regulating the state's abilities to structure employer-employee relationships in the areas of traditional governmental functions. In holding that the Fair Labor Standards Act amendments could not be enforced by Congress on the states, the Court noted:

> These activities [governmental functions] are typical of those performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services. Indeed, it is functions such as these which governments are created to provide, services such as these which the States have traditionally afforded their citizens. If Congress may withdraw from the States the authority to make these fundamental employment decisions upon which their systems for performance of these functions must rest, we think there would be little left of the States' "separate and independent existence." ... In so doing, Congress has sought to wield its power in a fashion that would impair the States' "ability to function effectively in a federal system." This exercise of congressional authority does not comport with the federal system of government embodied in the Constitution. 8/

It is difficult to generalize on the basis of these three cases. It seems clear, however, that the Supreme Court has accepted the Hamiltonian concept of the meaning of the general-welfare clause--that it confers broad and extensive powers on Congress, powers not limited to those enumerated

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8. National League of Cities v. Usery, 426 U.S. 833 (1976).

in the Constitution. It seems clear that Congress has the power to tax and spend for any purpose that promotes the general welfare, something education definitely does. It is also clear that in exercising this power to tax and spend, Congress will not be controlled by the Court unless it acts illegally or arbitrarily.

The limits of the federal government's authority, springing from the general-welfare clause, with respect to education are not clear, however. While Congress may tax and spend for education, its right to use the taxing power as a means of controlling education has never been before the courts. While it seems a well-established principle of law that the federal government may employ whatever means are necessary to carry into effect the powers conferred upon it, and since the general-welfare clause does confer substantive powers upon it, Congress may have extensive powers not only with respect to the support of education but with respect to its control as well. But, as already stated, as yet no decision rendered by our higher courts has so held.

In the three cases already cited--United States v. Butler, Helvering v. Davis, and National League of Cities v. Usery--the Court has held, at least, that Congress cannot tax and spend for the primary purpose of regulating and controlling matters of state concern with respect to which the federal government has no authority to interfere. Is education such a matter? To this question the Court has never been required to provide a direct answer. While courts have universally held that education is a matter of state concern, there is no reason to believe that some future court, faced with providing a direct answer to the question, may not hold that, because of the general-welfare clause, education is also a matter of concern of the federal government.

In spite of what the courts have already held, or may hold in the future, it is generally felt that the federal government has indirectly achieved an element of control as the result of its use of the taxing power. The enactment of laws such as the Elementary and Secondary Education Act, the National Defense Education Act, and Public Law 874 has wrought changes in educational practices--changes which were not mandated but which were dictated by the desires of individual schools and individual states to share in the federal government's largess. Other federal laws have directly mandated educational practices and services. The Rehabilitation Act of 1973, along with the Education for All Handicapped Children Act of 1975 (Public Law 94-142), controls a broad range of educational practices within the individual states concerning handicapped students. Other recent federal enactments have had significant impact on the relationship of public schools and students in areas such as access to student records under the Family Educational Rights and Privacy Act of 1975 and sex discrimination in curricular and extra-

curricular programs under Title IX of the Educational Amendments of 1972. Whether mandated or not, these changes stemmed from action taken by the federal government. As a result, one can but question whether or not these changes provide us with examples of federal control. If so, then we might ask, "Is this the type of control the federal government is forbidden to exercise through the use of its taxing power?" The answer is not available and will not be until the United States Supreme Court provides it.

In any case, the federal government does have some control over education. The states' powers over educational policy are vitally affected by certain provisions found in the federal Constitution, such as those found in the Fourteenth Amendment which forbids any state from denying to any individual the equal protection of the law and which also provides that no state shall "deprive any person of life, liberty, or property without due process of law" and those found in the First Amendment which prohibits Congress from enacting any law "respecting an establishment of religion, or prohibiting the free exercise thereof," which, by virtue of the Fourteenth Amendment, has been held applicable to the states as well as to Congress.

Since the last word on the question of constitutionality under the federal Constitution is reserved to the federal courts, especially the United States Supreme Court, decisions rendered by these courts on questions such as individual rights and due process carry the weight of law. So, it is evident that the federal government, acting through the judicial department, does exert some control over education, even though its actions may be more indirect than direct. In any case, the holdings of the federal courts exert controls that are just as binding and just as effective as though they had been exerted by the legislative branch of government. These controls, it would appear from the increasing number of federal cases decided each year, are rapidly expanding.

The State and Education.--Today, it is generally agreed that education is a function of the state and not the federal government or local units of government. In other words, it is the state, not the federal or local units of government, that has the authority to create, maintain, and support a system of public schools. This, as previously indicated, follows because, in our form of government, the state is sovereign. Its authority, expressed in its constitution as well as in its statutes, is unlimited except with respect to those powers it divested itself of and which it vested in the federal government--powers specifically granted to the federal government by the United States Constitution. Education not being one of these powers, it is assumed that this power is retained by the states. With this, both state and federal courts are in agreement. While, as already in-

dicated, the question of the authority of the federal government to control schools and education has never been the subject of direct litigation, the question of the authority of local units of government, as opposed to the state, has been the subject of litigation on numerous occasions. In a Kentucky case, 9/ in which it was held that education is essentially and intrinsically a state rather than a local function, the court, in commenting on the state's authority over schools and education, said:

> ... whilst public education in this country is now deemed a public duty in every state ... it has never been looked upon as being at all a matter of local concern only. On the contrary, it is regarded as an essential to the preservation of liberty--as forming one of the first duties of a democratic government....
>
> In this state the subject of education has always been regarded and treated as a matter of state concern.... The city schools ... are part of the common school system.

The Local Unit of Government and Education.--Most people, recognizing that our schools are agencies of government and that education is a function of government, tend to associate schools and education with local units of government. They think of the school as a local agency of government, located in a particular locality, belonging to that locality, governed or administered by residents of that locality, and serving that particular locality. While it does serve a particular locality or area, and while that area has been given much of the authority to administer a school located therein, the school belongs to and serves the whole of society. It is an agency of the state or central government rather than of the local government. Education is of such major concern to society that the people are not willing to see it diffused or diluted, as it necessarily would be if each local unit of government were permitted to exercise complete control over the school or schools located within its boundaries.

This line of reasoning is illustrated by a decision rendered by a Tennessee court. 10/ This was an action brought against a teacher who refused to obey a uniform textbook law. He contended the act was unconstitutional because,

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9. City of Louisville v. Commonwealth, 134 Ky. 488 (1909).

10. Leeper v. State, 103 Tenn. 500, 53 S.W. 962 (1899).

among other things, it denied the right of local self-government to the people. The court, rejecting this contention, held the act was constitutional. It said:

> It is said the Act denies local self-government.... It is said, in broad terms, that the people have an inherent fundamental and vested right to administer their own local affairs, as the people of each county and district shall deem right and proper. We cannot enter into a consideration of such general doctrine, but will attempt to discuss it so far as it touches upon the common school system, and the manner of its execution. This system is supported in part by State funds and in part by county taxes. But the latter, at least, are but State funds, provided by the state through the power delegated to the counties.... It is insisted that heretofore there has been more or less of local control and government of the public schools, but this local government was authorized by, and was the creature of the statute, and the legislature is not precluded from framing other statutes if it deems it wise to do so, modifying former plans....
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> Carried to its logical result, the contention of counsel is that each county may have its own system, make its own rules, prescribe its own course of study, and proceeding further, each school district may do the same, so that we may have as many systems in the state as there are school districts. This is carrying the doctrine of local government too far. By the same parity of reasoning, it might be said that each county may establish its own criminal laws, provide its own courts to execute the laws, and to deny them these rights would be to deny the right of local self-government. We are of the opinion that the legislature, under the constitutional provision, may as well establish a uniform system of schools and a uniform administration of them, as it may establish a uniform system of criminal laws and of courts to execute them. The object of the criminal laws is, by punishment, to deter others from the commission of crimes, and thus preserve the peace, morals, good order, and well-being of society, and the object of the public school system is to prevent crime, by educating the people, and thus, by providing and securing a higher state of intelligence and morals, conserve the peace, good order and well-being of society. The prevention of crime and preservation of good order and peace is the highest exercise of the

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> police power of the State, whether done by punishing offenders or educating the children....

Along this same line, another Tennessee court said:

> The public school system is a matter of state, and not local concern, and the establishment, maintenance, and control of the public schools is a legislative function. To promote the public schools, the state, through the Legislature, may levy taxes directly, or the state, having as it does, full control over its agencies, the counties, may authorize them to levy a tax, or may by statute require them to levy a tax for the establishment and maintenance of public schools.
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> The exercise of the taxing power to promote a system of public schools for all the counties does not infringe upon the right of local self-government, because a public school system, like a highway system, a penal system, or a matter of public health is not of purely local, but of state concern. The state is a unit, and the Legislature is the state's source of legislative power, from which flows the mandate of the state. 11/

It must never be forgotten that these powers and functions, with respect to the administration, control, and support of public schools, which have been delegated by the state, are powers inherent in the state which is sovereign. Those powers which have been delegated by it are the only ones which the local units of government possess, and their possession of them is little short of temporary. Having once delegated them, the state may withdraw them at any time it desires, and the local units have no legal right to complain. All this because in our form of government the state is supreme, as it is the possessor of sovereignty.

The courts have consistently upheld the right of the state, acting through the legislature, to enact legislation relating to educational matters. They take the view that authority over education is peculiarly a state function and that local school districts are agencies of the state and must look to the state for any authority they attempt to exercise. In so holding, a Pennsylvania court said:

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11. State ex rel. Harned v. Meador, 153 Tenn. 634, 284 S.W. 890 (1926).

> The establishment, maintenance and support of a system of common schools having been imposed upon the legislative department of the government, it must employ agencies to accomplish that object, and the manner of their selection is peculiarly within its discretion. The school district is but an agency of the Commonwealth and there is no inherent right in the electors of any particular locality to vote for directors; subject to constitutional restrictions, the State may provide any method for the selection of its agents it may see fit, and the methods employed need not be alike in all instances. 12/

12. Minsinger v. Rau, 236 Pa. 327, 84 A. 902 (1912).

CHAPTER III

The Purpose of Public Education

"While most people regard the public schools as the means of great personal advantages to the pupils, the fact is often overlooked that they are governmental means of protecting the state from the consequences of an ignorant and incompetent citizenship."—*Fogg* v. *Board of Education of Littleton*, 76 N.H. 296, 82 A. 173 (1860).

Introduction

As has already been indicated, education is a function of government. Not only is it a function of government, but it is a function of the state government. This follows because the state is sovereign. Government by the sovereign has certain attributes. Among these are: (1) the power to levy and collect taxes, (2) the power to maintain a police force, (3) the power to maintain military forces, and (4) the power to administer justice. All of these attributes of sovereignty have grown from the function of government, which is to promote the welfare, good order, and peace of society. The courts of this country have held that the power to tax for the purpose of maintaining schools for the public is as much an attribute to sovereignty as is the power to administer justice, the right to exercise police power, or the right to maintain military forces.

"State" Defined

It is not enough to recognize that education is a state function rather than a federal or local function. The reasoning behind it should be thoroughly understood if we are to appreciate the purpose or function of public schools in our democratic social order. First, it is necessary to have an understanding of the meaning of the word "state" as it is used in our form of government. This term refers to the people acting in their corporate capacity; the people considered together as a body constitute the state. They unite and, as a group, take whatever action is necessary for the welfare of the group or the people as a whole. In this connection, the following statement made by the United States Supreme Court is apropos:

> A distinction was taken at the bar between a state, and the people of a state. It is a distinction I am not capable of comprehending. By a state forming a republic (speaking of it as a moral person), I do not mean the legislature of the state, the executive of the state or the judiciary, but all the citizens which compose the state, and are, if I may so express myself, integral parts of it; all together forming a body politic.... But in a republic all the citizens, as such, are equal, and no citizen can rightfully exercise any authority over another, but in virtue of a power constitutionally given by the whole community which forms such body politic. In such governments therefore, the sovereignty resides in the great body of the people,

> but it resides in them, not as so many distinct individuals, but in their politic capacity only. Thus A., B., C., and D., citizens of Pennsylvania, and as such, together with all the citizens of Pennsylvania, share in the sovereignty of the state. Suppose a state [were] to consist exactly of the number of 100,000 citizens, and it were practicable for all of them to assemble at one time and in one place, and that 99,999 did actually assemble: the state would not be, in fact, assembled. Why? Because the state, in fact, is composed of all the citizens, not of a part only, however large that part may be, and one is wanting. 1/

With this concept in mind, one can see that the statement "education is a state function" really means that it is a matter of common concern of all the people, not of any particular individual, group, faction, or community.

Responsibility of Parents for Education

However, the question "Why has the state seen fit to encourage or promote a system of free public schools?" remains. Again, few people have an adequate answer to this question. If their answer is to be judged by their actions, it would appear that many look upon the school as an agency created for the purpose of relieving parents of a duty that has long been recognized as theirs under the common law. Blackstone, the eminent English jurist, who attempted, in his Commentaries, to put the unwritten, or common, law into written form, had the following to say on this matter: "The ... duty of parents to their children is that of giving them an education suitable to their station in life: a duty pointed out by reason and of far the greatest importance of any." 2/

The State's Stake in This Matter

As Viewed by Early Statesmen.--A study of statements made by a number of the Founding Fathers of this country in-

1. Penhallow v. Doane, 3 Dall. (U.S.) 54 (1795).
2. William Blackstone, Commentaries on the Laws of England, ed. George Sharswood (two vols., four books; Philadelphia: J. B. Lippincott Company, 1900), I, 450.

dicates that the state's interest in public education grew out of or sprang from its desire to strengthen itself. Jefferson, who early recognized the need for public education, said:

> It is an axiom in my mind that our liberty can never be safe but in the hands of the people themselves, and that too of the people with a certain degree of instruction. This is the business of the state to effect, and on a general plan. 3/

Likewise, Benjamin Franklin, as early as 1749, recognized this, and, in commenting on the relationship of schools to the central, colonial, or state government, said:

> The good Education of Youth has been esteemed by wise men in all Ages, as the surest Foundation of the Happiness both of private Families and of Commonwealths. Almost all Governments have therefore made it a principal Object of their Attention to establish and endow with proper Revenues, such Seminaries of Learning, as might supply the succeeding Age with Men qualified to serve the Public with Honor to themselves and their Country. 4/

Washington, in his message to Congress, in 1790, said:

> Knowledge is in every country the surest basis of public happiness. In one in which the measures of government receive their impressions so immediately from the sense of the community as in ours, it is proportionably essential. To the security of a free constitution it contributes in various ways: by convincing those who are intrusted with the public administration that every valuable end of government is best answered by the enlightened confidence of the people; and by teaching the people themselves to know and value their own rights; to discern and provide against invasions of them;

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3. Julian Boyd, ed., The Papers of Thomas Jefferson (Princeton, N.J.: Princeton University Press, 1958), IX, 151.

4. Benjamin Franklin, Proposals for the Education of Youth in Pennsylvania, 1749. (Ann Arbor, Mich.: The William L. Clement's Library, 1927), p. 5.

> to distinguish between oppression and the necessary exercise of lawful authority, between burdens proceeding from a disregard to their convenience and those resulting from the inevitable exigencies of Society; to discriminate the spirit of Liberty from that of licentiousness, cherishing the first, avoiding the last, and uniting a speedy, but temperate vigilance against encroachments, with an inviolable respect to Law. 5/

Somewhat later, Horace Mann, in commenting on the state's responsibility for education, made the following significant statement:

> ... under our republican government, it seems clear that the minimum of this education can never be less than such as is sufficient to qualify each citizen for the civil and social duties he will be called to discharge--such an education as teaches an individual the great laws of bodily health, as qualifies for the fulfillment of parental duties, as is indispensable for civil functions of a witness or juror, as is necessary for the voter in municipal and in national affairs, and, finally as is requisite for the faithful and conscientious discharge of all those duties which devolve upon the inheritor of a portion of the sovereignty of this great republic. 6/

Probably, however, no one has recognized the relationship of education to the state more clearly, nor stated it more simply, than did Thaddeus Stevens, the defender of Pennsylvania's early public school system. In 1835, Stevens, a member of the General Assembly, while speaking before the House of Representatives, made the following statement:

> If an elective republic is to endure for any great length of time, every elector must have sufficient information, not only to accumulate wealth and take care of his pecuniary concerns, but to direct wisely the Legislature, the Ambassadors, and the Executive of the nation; for some part of

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5. John C. Fitzpatrick, ed., Writings of Washington. (Washington, D.C.: U.S. Government Printing Office, 1939), XXX, 493.

6. Horace Mann, Annual Report on Education. (Boston: Horace B. Fuller, 1868), p. 534.

> all these things, some agency in approving and disapproving of them, falls to every freeman. If, then, the permanency of our government depends upon such knowledge, it is the duty of government to see that the means of information be diffused to every citizen. This is a sufficient answer to those who deem education a private and not a public duty.... 7/

As Viewed by the Courts.--This concept that education is a function of government--a state function--is not confined to statesmen alone. It has long been accepted by our courts, which have consistently looked upon public schools as agencies created to protect and perpetuate the democratic way of life--agencies to guarantee the very essence of the democratic state. The Supreme Court of Connecticut, in 1894, in commenting to this effect, said:

> The duty of providing for the education of the children within its limits, through the support and maintenance of public schools, has always been regarded in this State in the light of a governmental duty resting upon the sovereign State. It is a duty not imposed by constitutional provision, but has always been assumed by the State; not only because the education of youth is a matter of great public utility, but also and chiefly because it is one of great public necessity for the protection and welfare of the State itself. In the performance of this duty, the State maintains and supports at great expense, and with an ever watchful solicitude, public schools throughout its territory, and secures to its youth the privilege of attendance therein. This is a privilege or advantage, rather than a right in the strict technical sense of the term. 8/

To the same effect is the following statement made by the New Hampshire Supreme Court in 1860. It said:

> The primary purpose of the maintenance of the common school system is the promotion of the general intelligence of the people constituting the

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7. The Famous Speech of Hon. Thaddeus Stevens of Pennsylvania. (Philadelphia: Thaddeus Stevens Memorial Association of Philadelphia, 1904), p. 5.
8. Bissell v. Davidson, 65 Conn. 183, 32 A. 348 (1894).

> body politic and thereby to increase the usefulness and efficiency of the citizens, upon which the government of society depends. Free schooling furnished by the state is not so much a right granted to pupils as a duty imposed upon them for the public good. 9/

Probably one of the best judicial pronouncements on this question, and one most frequently referred to in this connection, was made by the Supreme Court of Illinois in 1914. It said:

> The public school system of the State was not established and has not been maintained as a charity or from philanthropic motives. The first legislative expression in regard to schools in Illinois was in the ordinance of 1787, which declares that "religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." This declaration grew, not out of philanthropic motives, but out of consideration of the essentials of good government. The conduct and maintenance of schools by school directors, school trustees and boards is no less an "exercise of the functions vested in those charged with the conduct of the government" is no less a part of "the science and art of government" and deals no less with the "organization, regulation and administration of a State" in its internal affairs, than the construction and maintenance of roads by the commissioners of highways; the conduct and maintenance of charitable institutions of the State by the board of administration; the inspection of factories, and the enforcement of laws for the protection of workmen and in regard to the employment of women and children, by the factory inspectors; the performance by the industrial board of duties imposed upon it by law, and the performance of many other duties by public officials which, however beneficial to individuals, are not undertaken from philanthropic or charitable motives, but for the protection, safety, and welfare of the citizens of the State in the interest of good government. 10/

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9. Fogg v. Board of Education of Littleton, 76 N.H. 296, 82 A. 173 (1860).
10. Scown v. Czarnecki, 264 Ill. 305 (1914).

Significance of This Concept

This idea that the public school is an agency of the state, created by the state for the purpose of promoting the welfare of the state, is not abstract legalistic theory; neither is it a purely academic matter. It is based upon sound reasoning and must be understood if the purpose of education in our democratic form of government is to be comprehended. Consequently, it should be basic to the thinking of all those charged with overseeing our public schools--teachers, administrators, and board members.

If, instead, the school is thought of as an agency to relieve parents of some of their responsibilities--if education at public expense is looked upon as a natural right of the child--then the public school must be thought of as a great public charity and the children who attend and their parents who send them must be thought of as recipients of charity. Needless to say, such an idea is abhorrent to most Americans, and if generally accepted, it would have but one result. Parents with sufficient financial resources would withdraw their children from public schools and enroll them in private schools, and the public schools would become "class" schools--schools for the children of the poor and the destitute alone. This, it need not be argued, would defeat the very purpose of education--to minimize the effects of differences of class, race, ethnicity, and creed.

If public education is considered a charity, then school taxes must be looked upon as a burden and an imposition. This does not provide the childless taxpayer or the large, impersonal corporation with much incentive for paying school taxes. If, however, these taxes are looked upon as a contribution made to the defense of a democratic society--a democratic social order, in which individuals remain free to order their own affairs and their own lives--then they are no longer considered as a burden but as part of the price that must be paid for freedom.

Finally, it must be remembered that educational policies and teaching practices should be based upon the philosophy of education held by those in authority. If schools exist as charitable agencies--agencies to relieve parents of their rightful responsibility--one set of practices may be called for. If, however, they exist as bastions of democracy, other practices may be in order. Consequently, it is essential that teachers see the public schools in their proper light and come to an understanding of their purpose in a democratic society.

Implications of This Concept

The fact that education is a function of the state is important because it is the foundation upon which the public school systems of the 50 states are based. Not only is this statement important, but it also has numerous implications which must be understood, especially by those charged with the responsibility for staffing our public schools. Unless they are understood, one cannot have an adequate comprehension of the public school system as it exists in the various states.

School Districts Are State Agencies.-School districts--quasi-municipal corporations--are not to be confused with cities, villages, and townships, which are purely municipal corporations. The latter are created for purposes of local government, while school districts are created to assist the state in carrying out a state function. Therefore, school districts are considered as arms, or agents, of the state, for the performance of a state function. In commenting on this status, a Louisiana court said:

> That an agency or subdivision of the state created by the sovereign state itself, is in effect the state or the alter ego thereof, entitled to the same principles and immunities as its creator (except as otherwise expressly limited by the state) is a principle of almost universal recognition and application....
>
> The state, which is the sovereign power under our theory of government, comprehends and includes administrative departments and agencies....
>
> School boards are agencies of the State of Louisiana as administrators of a system of public education which is a function of the sovereign as held by the Supreme Court of this State.... 11/

It is significant that the court did not stop when it stated that a school district or school board is an agency of the state. The court also pointed out that it is a special agency of the state. It said:

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11. Terrebone Parish School Board v. St. Mary Parish School Board, 131 So.2d 266 (1961).

> The provision in issue clearly and unambiguously expresses the legislative and electorate intent that school boards shall be considered not merely ordinary agencies of the sovereign state but something more or to use the terminology of the section itself "special agencies of the State of Louisiana." Such precise, specific and exceptional designation must be presumed to confer upon such agencies an extraordinary status bringing them even closer to the state than the ordinary political corporation or subdivision and investing them with special rights, powers and privileges above and beyond those possessed by ordinary state departments. 12/

Likewise, a Pennsylvania court, in commenting on the nature of a school district, said:

> ... it should be remembered that our entire school system is but an agency of the State Legislature--maintained by them to carry out a constitutional duty. The school system, or the school district, then, [is an agency] of the State Legislature to administer this constitutional duty....
>
> Within that school system, a school district is an agency of the State.... 13/

An Illinois court, in commenting on the same point, said: "A [school] district ... is a quasi-municipal corporation or minor subdivision of the state and serves as an administrative arm of the legislature...." 14/

Similarly, a Virginia court characterized a school district as "a governmental agency or arm of the state ... [that] acts in a governmental capacity in the performance of its duties imposed by law." 15/

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12. Ibid., at 271.
13. Slippery Rock Area Joint School System v. Franklin Township School District, 389 Pa. 435, 133 A.2d 848 (1957).
14. Board of Education of Community Consolidated School District No. 606 v. Board of Education of Community Unit District No. 124, 11 Ill. App.2d 1408, 137 N.E.2d 721 (1956).
15. Kellam v. School Board, 202 Va. 252, 117 S.E.2d 96 (1960).

Additional evidence, while readily available, is not necessary to show that the courts look upon school districts as state agencies.

School Officers Are State Officers.--It has already been shown that education is a state function and that school districts are state agencies. From this it necessarily follows that school officers are state officers. Therefore, school board members or school directors are not officers of a local nature. Instead, they have the status of state officers. In this connection it has been held that they have the same legal status as do regularly elected or appointed officers of the state who occupy offices at the seat of government. The Court of Appeals of Kentucky, in commenting on the status of school officers, said: "We have said that the members of a county board of education and its officers are "state officers," although they are elected locally and function in a local capacity, because education is a state function." 16/

Likewise, another Kentucky court, in commenting on this same question, pointed out that "officers and employees of school districts are deemed to be officers and employees of the state." 17/

A Texas court, in expressing its views on the question of the status of county school officers, made the following comment:

> ... the counties ... [are] recognized with reference to that business [the administration of schools] merely as convenient subdivisions of territory and some of their officers as proper agents for the administration of affairs relating to the public free schools. Such officers, with respect to such affairs, act for the State and not for the county. 18/

Again, a Colorado court took the same position when it said:

> A school district is a subdivision of the state for educational purposes. The several officers charged with the supervision of the schools, from

16. Hogan v. Glasscock, 324 S.W.2d 815 (1959).
17. Board of Education v. DeWeese, 343 S.W.2d 598 (1961).
18. Webb County v. Board of School Trustees of Laredo, 95 Tex. 131, 65 S.W. 878 (1901).

> the state board of education down to the directors of the school district, are merely the instruments of the state government, chosen for the purpose of effectuating its policy in relation to schools.... 19/

School Property Is State Property.--Following this same line of reasoning--i.e., education is a state function--courts have consistently held that school property is state property. This means, of course, that school buildings and school sites are not the property of the local community in which they are located. The local board of education--a state agency--"holds title to property of a school district in trust for school purposes." 20/ In other words, title to school property, according to a Missouri court, has been held to be "vested in the state for the benefit of its entire citizenry." 21/

An Illinois decision is particularly apropos in this connection, as it provides one of the most inclusive statements relative to the matter. The court said:

> It is fundamental that the state may, with or without the consent of the inhabitants of a school district, and with or without notice or hearing, take the school facilities in the district without compensation and vest them in other districts or agencies. This is for the reason that a school district as such owns no property. All school facilities, such as grounds, buildings, equipment and so forth are in law and in fact the property of the state of Illinois, and subject to the legislative will. 22/

Likewise, in Florida the courts have held similarly. Here it was stated:

> Property of a school board, or of trustees of a special tax school district, is property held by the board or district trustees, for the use of

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19. Forman v. School District, 6 Colo. App. 319, 40 P. 469 (1895).
20. State v. Board of Education, 88 N.E. 2d 808 (1949).
21. State v. Davis, 361 Mo. 730, 236 S.W.2d 301 (1951).
22. Board of Education of Wellington Community Unit School District v. County Board of School Trustees, 13 Ill. App.2d 561, 142 N.E.2d 742 (1957).

> the state, to carry on the state's constitutional system of public schools, established in accordance with the ... Constitution.... 23/

A quotation from a California court gives further evidence that school property is state property. Here the court said:

> ... the beneficial owner of the fee [public school property] is the state itself, and ... its agencies and mandatories--the various public and municipal corporations in whom the title rests--are essentially nothing but trustees of the state, holding the property and devoting it to the uses which the state itself directs. 24/

Further evidence that school property is state property is unnecessary.

School Money Is State Money and School Taxes Are State Taxes.--By the same parity of reasoning, courts have held that money in the school district's treasury is state money--i.e., it belongs to the state. Likewise, it has been held that school taxes levied by a school district are, upon collection, state and not local taxes. This follows because, being levied for education, they are levied for a state and not a local purpose. In commenting on the nature of school funds, a California court said:

> School funds are particular funds set aside for specific purposes.... Indeed, school district funds are trust funds, the beneficial ownership of the fee title to such funds belonging in the State of California, and legal title being in the school district, a party to the trust. 25/

In this connection, an Indiana court, in commenting on the nature of the common school fund, pointed out that it was "a

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23. Blake v. City of Tampa, 115 Fla. 348, 156 So. 97 (1934).
24. Pass School District v. Hollywood District, 156 Cal. 416, 105 P. 122 (1909).
25. Foothill Junior College District v. Board of Supervisors, 17 Cal.Rptr. 870 (1962).

public fund of the state in which every taxpayer of the state has a supreme interest." 26/

With respect to school taxes, a Kentucky court had the following to say:

> ... when a municipal body, or a county, or a school district, levies taxes for school purposes, the tax so levied is a state, and not a municipal, county, or district tax, although it be levied and collected by municipal or county or district officers. 27/

A Texas court accepted the same general principle. It said:

> Taxes due ... school districts, levied for the maintenance of a system of public free schools, are due to them as agencies of the state and in their legislative purpose are, in legal effect, taxes due the state.... School districts, in administering their free school funds, are "mere trustees." 28/

A Tennessee court, in considering school taxes, characterized them as follows:

> Whether the levying a tax for school purposes is either a county or corporation purpose ... is ... a subject of serious doubt, since the same purpose thereby becomes at the same time, a State, county and corporation purpose.... A county or corporation purpose, would more naturally indicate a purpose, peculiar to each, some matter exclusively within its control, and not subject to the control of the other. 29/

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26. Mitsch v. City of Hammond, 234 Ind. 285, 125 N.E.2d 21 (1955).
27. City of Louisville v. Board of Education of City of Louisville, 154 Ky. 316, 157 S.W. 379 (1913).
28. Richardson v. Liberty Independent School District, 22 S.W.2d 475 (1929).
29. Waterhouse v. Board of President and Directors of the Cleveland Public Schools, 55 Tenn. (8 Heisk.) 857 (1874).

But even more recently--in 1967--the Supreme Court of Missouri, in a pronouncement regarding the nature of school funds, said: "Furthermore, funds of school districts are the property of the state, and not the property of the school districts...." 30/

School Districts and Cities and Towns Are Separate Governmental Entities.--The concept of education as a state function and not a function of the local governmental units is of extreme importance in governing the relation of the local school corporation to the local municipal corporation. A school district and a city may have identical boundaries and comprise exactly the same territory, but they are usually distinct legal entities, each with its own functions. The Supreme Court of Wisconsin, in considering the relationship of the city of Milwaukee and the school district of the city of Milwaukee, said:

> ... although the boundaries of a school district may be coterminous with the boundaries of a city, there is no merger of the school district affairs with the city affairs. They remain separate and distinct units of government for the purpose of exercising separate and distinct powers. 31/

The school district is a quasi-municipal corporation created for the exclusive purpose of effecting a state purpose locally; the city is a municipal corporation created to direct and control local affairs. In this connection, the Supreme Court of Illinois held that a city could not make a binding contract for supplying water to a school district. It said:

> ... The City of Alton and the ... board of education [of the Alton Community School District] are separate corporate entities, each clothed with the power of taxation for its corporate purposes and for none other. They are organized under different laws, each for a specific purpose.... The board of education would have no power to levy a tax for the purpose of maintaining a city waterworks system or for any purpose for the sole benefit of the city in its corporate capacity, nor

30. State v. Dunne, 421 S.W.2d 268 (1967).
31. State v. Mayor of City of Milwaukee, 189 Wis. 84, 206 N.W. 210 (1925).

> would the city have any authority to levy a tax for the maintenance of a community high school. 32/

Not only may a city not use its funds for the maintenance of a high school, but it also may not use them for the establishment of a high school. In this connection, the Supreme Court of Louisiana, in enjoining the town of Homer from appropriating funds for the support and maintenance of a school, said:

> ... a high school is not essential to municipal government. A system of education is not a part of municipal regulation, and the power of the corporation to establish a public school cannot be inferred from any power necessary for municipal existence. 33/

Teachers Are State Employees.--Frequently teachers are looked upon as employees of the local community. Such is not the case. Just as education is a state function, so it is that teachers are state employees. The status of teachers, as viewed by the courts, will be considered in Chapter V.

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32. Board of Education v. Alton Water Co., 314 Ill. 466, 145 N.E. 683 (1924).

33. Nelson v. Mayor, etc., of Town of Homer, 48 La. Ann. 258, 19 So. 271 (1896).

CHAPTER IV

The Illinois Public School System

"With or without the consent of the inhabitants of a school district, over their protests, even without notice or hearing, the State may take the school facilities in the district, without giving compensation therefor, and vest them in other districts or agencies. The State may hold or manage the facilities directly or indirectly. . . . The 'property of the school district' is a phrase which is misleading. The district owns no property, all school facilities, such as grounds, buildings, equipment, etc., being in fact and law the property of the State and subject to the legislative will."—*People ex rel. Dixon* v. *Community School District No. 3*, 2 Ill.2d 454, 118 N.E.2d 241 (1954).

Background of the System

Introduction.--Public education, as previously noted, is a function of the state, not local, government. The basis of the Illinois public school system is found in the provisions of the state constitution, the statutes enacted by the General Assembly, and the interpretations of these statutes and constitutional provisions rendered by the higher courts in this state. The local school districts are wholly subject to the will of the legislature. School districts have been created under state law to carry out the function of providing public education. School boards are elected (or, in one case, appointed) to discharge a state function, and school board members are essentially state officers.

Constitutional Provisions.--The new constitution of the state of Illinois, adopted in 1970, most of which, with certain exceptions mentioned in a Transition Schedule, went into effect on January 1, 1971, contains one article (Art. X) which deals solely with "Schools" and "Education." This article reads as follows:

> SECTION 1. GOAL--FREE SCHOOLS
>
> A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.
>
> The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.
>
> The State has the primary responsibility for financing the system of public education.
>
> SECTION 2. STATE BOARD OF EDUCATION--CHIEF STATE EDUCATIONAL OFFICER
>
> (a) There is created a State Board of Education to be elected or selected on a regional basis. The number of members, their qualifications, terms of office and manner of election or selection shall be provided by law. The Board, except as limited by law, may establish goals, determine policies, provide for planning and evaluating education programs and recommend financing. The Board shall have such other duties and powers as provided by law.

(b) The State Board of Education shall appoint a chief state educational officer.

SECTION 3. PUBLIC FUNDS FOR SECTARIAN PURPOSES FORBIDDEN

Neither the General Assembly nor any country, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.

In addition to Article X, certain other sections of the constitution make direct reference to school districts. Sections in which this is the case follow.

The county treasurer or the person designated to perform his functions may act as treasurer of any unit of local government and any school district in his county when requested by any such unit or school district and shall so act when required to do so by law. 1/

Townships, school districts, special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law. No law shall grant the power (1) to any of the foregoing units to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred, or (2) to make improvements by special assessments to any of the foregoing classes of units which do not have that power on the effective date of this Constitution. The General Assembly shall provide by law for the selection of officers of the foregoing units, but the officers shall not be appointed by any person in the Judicial Branch. 2/

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1. Art. VII., Sec. 4e.
2. Art. VII, Sec. 8.

Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. ...units of local government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities. 3/

Officers and employees of units of local government and school districts may participate in intergovernmental activities authorized by their units of government without relinquishing their offices or positions. 4/

The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance. 5/

Reports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law. 6/

The Governor shall prepare and submit to the General Assembly at a time prescribed by law, a State budget for the ensuing fiscal year. The budget shall set forth the estimated balance of funds available for appropriation at the beginning of the fiscal year, the estimated receipts, and a plan for expenditures and obligations during the fiscal year of every department, authority, public corporation and quasi-public corporation of the State, every State college and university, and every other public agency created by the State, but not of units of local government or school districts. The budget shall also set forth the indebtedness and contingent liabilities of the State and such other information as may be required by law. Proposed expenditures shall not exceed funds estimated to be available for the fiscal year as shown in the budget. 7/

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3. Art. VII, Sec. 10a.
4. Art. VII, Sec. 10b.
5. Art. VIII, Sec. 1b.
6. Art. VIII, Sec. 1c.
7. Art. VIII, Sec. 2a.

> The General Assembly by law shall provide systems of accounting, auditing and reporting of the obligation, receipt and use of public funds. These systems shall be used by all units of local government and school districts. 8/

> The State, departments, authorities, public corporations and quasi-public corporations of the State, the State colleges and universities and other public agencies created by the State, may issue bonds or other evidences of indebtedness which are not secured by the full faith and credit or tax revenue of the State nor required to be repaid, directly or indirectly, from tax revenue, for such purposes and in such amounts as may be authorized by law. 9/

Undoubtedly, numerous other sections of the 1970 constitution have application to schools and school districts, but since they do not mention them specifically, the reference is implied, at best. In time, the courts will be asked to interpret many of these sections to determine their applicability to school districts. Not until they have ruled on such matters can one be certain. Until that time one can only conjecture.

It is interesting to note that while the previous constitution (Art. VIII) specifically mandated the General Assembly to provide "a thorough and efficient system of free schools," the new constitution (Art. X), under "SECTION 1. GOAL--FREE SCHOOLS," states: "A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities." The Supreme Court of Illinois has interpreted the meaning of this constitutional provision in the context of an alleged "duty" on behalf of a local district school board. A claim was made by a handicapped student that this provision specifically imposed a duty on local boards to place students in special education classes in order that they may be educated "to the limits of their capacities." In the opinion of the court, this constitutional provision does not place such a duty on a board. As stated by the court, "The article is not self-executing. Its pronouncement of the laudable goal of 'the educational development of all persons to the limits of their capacities' is a statement of general philosophy, rather than a mandate that certain means be provided in any specific form." 10/

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8. Art. VIII, Sec. 4.
9. Art. IX, Sec. 9f.
10. Pierce v. Board of Education of the City of Chicago, 69 Ill.2d 89, 370 N.E.2d 535 (1977).

The last sentence in Section 1, Article X, in the 1970 constitution did not appear in the 1870 constitution. This addition gave rise to considerable speculation concerning the meaning of the words "primary responsibility for financing the system of public education." Many Illinois educators argued that the fair interpretation indicated the state was required to provide something over one-half of the financial support needed to operate the public school districts of the state. This issue has also been addressed by the Illinois Supreme Court. In an action asserting that this constitutional provision required the state to provide not less than 50 percent of the funds needed to operate and maintain all public elementary and secondary institutions and services, the court found the statement was intended only as a "hortatory expression of a goal to be achieved." As stated by the court:

> Although the words used might be susceptible of that interpretation, an examination of the proceedings of the constitutional convention shows conclusively, in our opinion, that the sentence was intended only to express a goal or objective, and not to state a specific command. 11/

It is also interesting to note that Section 3 of Article X is taken directly from the 1870 constitution (Sec. 3, Art. VIII) and is quoted verbatim. The main difference between Article X of the 1970 constitution and Article VIII of the 1870 constitution is that the new constitution makes provision for a State Board of Education, whereas the earlier constitution did not. As a result, Illinois was one of the very few states that did not have such a governing body. Duties and powers have generally, in the past, in Illinois, been vested in the Superintendents of Public Instruction.

Again, the constitution of 1870 provided for the election of the State Superintendent by a vote of the people. Under the 1970 constitution, a "chief state educational officer" is appointed by the State Board of Education. While the specific title is not mentioned in the constitution, the Illinois School Code identifies the "chief education officer" as the State Superintendent of Education. Other states use titles such as "Superintendent of Public Instruction," "State Superintendent of Schools," "Commissioner of Education," and "State Secretary of Education." Regardless of title, however, such an officer is generally considered to be the chief ex-

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11. Blase v. State of Illinois, 55 Ill.2d 94, 302 N.E.2d 46 (1973).

ecutive officer of the state board. This change in the Illinois constitution was, in the minds of most specialists in the field, long overdue. There is general agreement that every state should have a state board of education and a chief school officer appointed by and directly responsible to the state board.

The General Assembly and Education

Introduction.--The legislature does not look to the constitution to see what authority has been granted to it; it looks there only to see what restrictions are placed upon it. It must do everything required of it by the constitution, and it may not do anything forbidden by that document. In all other matters--those not mentioned in the constitution--it determines what, if any, action it shall take. Except for the mandates and restrictions found in the constitutional provisions, quoted in the previous sections, and for any others that the courts hold concerning education or schools by implication, the General Assembly is an absolutely free agent and may take whatever action it desires in matters relating to education. Needless to say, the General Assembly has enacted many laws relating to education. 12/ These are to be found in Chapter 122 of the Illinois Revised Statutes. This chapter consists of 40 articles and a number of related acts, all of which are published separately in a volume known as The School Code of Illinois. Copies are available from the Office of the State Board of Education, in Springfield.

The statutes found in the School Code represent action taken by the legislature in carrying out the mandate of the constitution to "provide for an efficient system of high quality educational institutions and services."

An understanding of how the General Assembly exercises its power over education and how it meets its responsibilities in this regard can be gained by a brief review of its membership, lawmaking routine, and structure.

Membership of the General Assembly.--The legislative branch of government in Illinois consists of the Senate and the House of Representatives. Senators are elected for terms

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12. As a result of the 1970 constitution, the General Assembly was required to enact some new legislation. This section of the book dealing with legislation is bound to continue to change as the General Assembly attempts to implement the 1970 constitution.

that are staggered into a combination of two 4-year terms and one 2-year term every 10 years. The order of how these terms are determined is decided by lots after each 10-year reapportionment. Senatorial districts are divided into three categories, and the Secretary of State draws lots from the categories to determine which districts will have "4-4-2"-year terms, which districts will have "4-2-4" terms, and which will have "2-4-4" terms. Representatives are elected for two-year terms. Beginning in 1983, there will be 59 Senators and 118 members of the House of Representatives. This will result in a reduction of 59 members in the House who represent 118 single-member districts. 13/

Sessions of the General Assembly.--The General Assembly meets regularly on an annual basis. In addition, the governor or the members, who must follow certain procedures, may call it into special session for specific purposes at any time. Senatorial districts, which were originally laid out with "area" as a consideration, were for many years not subject to frequent change, but today they have been adjusted on a one-person, one-vote basis. Representative district boundaries which, in the past, were based upon population are required to be redrawn every 10 years because of continuing shifts in population. Senatorial districts are now coterminous, with two single-member representational districts. Cook County, which includes the city of Chicago, was, for years, the only county that was divided into several districts for either Senate or House purposes. In the most recent redistricting, county lines have been violated in many cases. In fact, the single-member House districts appear to have been drawn with little regard for county lines.

The principal duties of the General Assembly are to enact laws, to repeal and to amend them, and to adopt appropriation bills. This body may also conduct hearings on proposed legislation and may act on proposed amendments to the United States Constitution. In addition, it may propose amendments to the state constitution and submit them to the voters of the state. It also has certain powers that are rarely used in connection with the removal of public officials from office.

Committees of the General Assembly.--Both houses organize themselves into standing committees to consider bills of similar subject matter. In past sessions there have been many committees, with most members serving on several. (Recent reorganization has reduced the number of committees in the House and in the Senate.) Generally, bills on education relating to kindergarten through the twelfth grade are re-

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13. Additional information concerning the organization of the House of Representatives is not yet available.

ferred to the elementary and secondary education committees, although many of them are also referred to the appropriations committees because they include proposals for the appropriation of funds for school purposes. These committees frequently are decisive in determining the fate of educational bills. Ultimately, then, committees influence greatly the fate and the course of education in the state. Committee action is often crucial for education.

Committees may exercise their powers over bills by bottling them up (holding them without action) if they do not wish them to reach the body of the legislature for a vote. Committees may also hold hearings on bills, and they may seek advice and information about them from outside sources. Through the power to amend bills, committees may indeed choose to emasculate a bill through the amendment process. Still another power of committees is to report out a bill with an unfavorable recommendation.

Thus, the power and influence of a committee on school legislation can scarcely be exaggerated, for this minority group (the members of the committee) may prevent passage of legislation favored by a majority of the members of the General Assembly. 14/

Some Auxiliary Aids to the General Assembly.--The Legislative Reference Bureau has the function of assisting the General Assembly in the preparation of bills. It also publishes a weekly cumulative digest of all bills as they are introduced. A legal and legislative library is also maintained by the Bureau. The Illinois Legislative Council is the fact-finding and information-reporting agency of the General Assembly. The Budgetary Commission acts as a liaison agency between the office of the Governor and the General Assembly. One of its most important functions is to prepare the biennial budget. The Illinois Legislative Audit Commission serves the General Assembly in checking upon the propriety and legality of state expenditures. It carries out an annual audit of the office of the Auditor General.

In 1949, the Illinois School Problems Commission was created to study the schools of the state and to recommend passage of whatever school legislation it approved. Successive legislatures saw fit to continue it, and in 1957, it was made a permanent commission. Its endorsement of bills

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14. The Standing Committee on Elementary and Secondary Education in the Senate is composed of 7 members, and in the House, it is composed of 13 members. (Legislative Directory of the Eighty-Second General Assembly of Illinois, Illinois Manufacturers Association, pp. 12 and 41).

pertinent to schools has carried great weight with the General Assembly. The commission's membership consists of the State Superintendent of Education, five members of the House, five members of the Senate, the Director of Finance, and five persons appointed by the Governor.

Enactment of Legislation by the General Assembly.--Most of the procedures for enacting legislation are found in the rules of the two houses, although the constitution specifies some of the more fundamental steps in the passage of laws.

Each individual member of the General Assembly has the right to introduce bills or resolutions. After a bill is introduced, it is usually referred to the proper committee. If the committee recommends passage of the bill, it is read by title before the house which that committee represents. If the committee recommends "Do Not Pass," the bill is usually tabled. The sponsor can, of course, insist on a vote to discharge the committee, but, as a usual practice, a "Do Not Pass" recommendation marks the end of the bill. A second reading of the bill must be held on another legislative day. After the second reading, amendments to the bill can be offered for consideration by the entire membership. A third and final reading is then held on still another legislative day. For passage, a bill must receive a majority vote of the members elected.

Following favorable approval by one house, a bill must then be sent to the other house for essentially the same procedure. If the two houses pass bills that are not identical in language, a conference committee is usually appointed, with representation from both houses to reconcile the differences. After both houses have voted affirmatively on the same version of a bill, it is sent to the Governor for consideration.

If the Governor signs the bill, it becomes a law. Likewise, if he or she files it with the Secretary of State without signing it, it also becomes a law, automatically. The Governor may (and frequently does), when he or she sees fit, veto bills that have passed both houses. Under the constitution of 1970, the Governor has the additional authority to veto line items and to make corrective vetoes that must be concurred on by both houses. Assuming that the General Assembly has not adjourned *sine die*, two-thirds of the members elected to each house must vote to override the veto before the bill can become a law.

The Courts and Education

Although the General Assembly, through the statutes that it enacts, determines the educational policy of the

state to a great extent and may, therefore, be thought of as the source of a Board's authority, the decisions handed down by the higher state courts may also be thought of as the source of a Board's authority. The courts interpret the laws and the constitution and reconcile conflicts arising under the law. Their decisions have the force of the law just as much as do the pronouncements of the General Assembly. Like the statutes, they must be obeyed. Therefore, some knowledge of the educational policy of the state as announced by the courts becomes essential to those who would understand school law. In the pages that follow, reference is made, from time to time, to the most important of these decisions which, as stated, are part of the law.

State Educational Machinery

Introduction.--The state, in carrying out its functions regarding the creation, support, and administration of public schools, finds it necessary to create an organizational structure. In Illinois, the 1970 constitution and the legislature have created a three-pronged structure at the state level. This structure consists of: (1) the State Board of Education, (2) the State Superintendent of Education, and (3) a State Board staff, which is administered by the State Superintendent. This is the general pattern found in most states, but with numerous modifications.

State Board of Education.--The 1970 Illinois Constitution mandated a State Board of Education. This mandate was implemented by the enactment of Public Act 78-361, effective on October 1, 1973. Members of the State Board of Education are appointed by the governor, with the advice and consent of the Senate. The board consists of 17 members who are appointed from the five judicial districts established in Illinois. Eight members are appointed from the First Judicial District, four of whom must be residents of the city of Chicago and four of whom must be residents of that part of Cook County which lies outside the city limits of Chicago. Two appointees are selected from each of the remaining four judicial districts. The State Board also contains one member selected as a member-at-large. The School Code prohibits more than nine members of the State Board from being of one political party, with party membership identified as which political party's ballot an individual requested in the last primary election before appointment to the State Board. The original terms for members commenced on January 13, 1975, and all terms since that date are for six years. A member may continue serving on the State Board after the expiration of the six-year term until a successor is appointed and con-

firmed (Sec. IA-1). 15/ No member may be appointed to more than two 6-year terms (Sec. IA-2). Vacancies occurring on the State Board are filled by the same appointment and confirmation process as that which is followed for the selection of new members. A member appointed to fill a vacancy serves for the duration of the unexpired term (Sec. IA-1).

Qualifications for serving on the State Board of Education require United States citizenship and residency in the state of Illinois. Appointees are to be selected, as far as may be practicable, on the basis of their knowledge of, or interest and experience in, problems of public education. While members of the Board serve without salary, they are reimbursed for all "ordinary and necessary expenses" incurred in performing their duties as members of the Board. Members may include in their claim for expenses $50 per day for meeting days. The qualifications for membership exclude current educators and local board members, with the provision that:

> No member[s] of the State Board of Education shall be gainfully employed or administratively connected with any school system or institution of higher learning, public or private, within Illinois, nor shall they be members of a school board or board of school trustees of a public or nonpublic school, college, university or technical institution within Illinois (Sec. IA-2).

This restriction has been tested judicially. A teacher and a teachers' union challenged the constitutionality of this restriction, because it made all active educators in Illinois ineligible for membership on the State Board and thus denied them equal protection of the law. In upholding this restriction, the Illinois Supreme Court observed:

> The obvious purpose to be served in limiting membership on the State Board of Education to persons not actively engaged in or connected with any school or school system is to prevent any potential conflict of interest and to prevent placing people on the Board whose other interests would naturally tend to promote or favor one segment of the state's educational structure over another. Considering the broad range of powers currently exercised by the ... State Board of Education, we think the State

15. Citations in this form refer to The School Code of Illinois, 1981, and additional acts included therein unless otherwise indicated.

> has a legitimate interest in acting to accomplish these goals. Disqualification from Board membership of all persons associated with any school or school system is surely a reasonable method of doing this. Consequently, [S]ection 1A-2 does not violate ... rights to equal protection of the laws. 16/

The powers and duties vested in the Illinois State Board of Education are expressed in both specific and general terms. A specific power is the determination of the qualifications, and the appointment, of the State Superintendent of Education. By statute, the State Board is specifically identified as being responsible for preparing and submitting to the General Assembly and the Governor an annual report or reports of its findings and recommendations concerning schools. In more general terms, the Board's powers and duties include the responsibility for the educational policies and guidelines for public and private schools, preschool through twelfth grade, and for vocational education in Illinois. In addition, the Board is required to analyze the present and future aims, needs, and requirements of education in the state and to recommend to the General Assembly the powers which should be exercised by the Board and the legislation which are necessary to determine the appropriate relationship between the Board and local boards of education and various state agencies. Some restrictions are specified, i.e., while the State Board is empowered to delegate ministerial duties to the State Superintendent of Education, the Board is prohibited from delegating the authority to recognize school districts or withhold state payments as a penalty (Sec. 1A-4).

Many of the State Board's powers and duties are related to programs and services directed toward local districts. These include supervising all schools in the state (Sec. 2-3.4); granting and suspending teacher certificates (Sec. 2-3.9); visiting charitable institutions of the state which are educational in character (Sec. 2-3.10); preparing school building specifications (Sec. 2-3.12); rendering legal opinions to school officers upon request (Sec. 2-3.7); formulating and approving forms, procedures, and regulations for school district accounts and budgets (Sec. 2-3.27); establishing a Department of School District Organization to assist local districts in studying problems of organization for the purpose of improving educational opportunities (Sec. 2-3.35); preparing procedures and materials to encourage and assist local school districts to develop minimal competency

16. Hoskins v. Walker, 57 Ill.2d 503, 315 N.E.2d 25 (1974).

testing programs (Sec. 2-3.42); and many other duties too numerous to list here.

State Superintendent of Education.--As already indicated, the 1970 constitution (Art. X, Sec. 2) provides that there shall be a "chief state educational officer," who shall be appointed by the State Board of Education. The State Superintendent of Education in Illinois serves at the pleasure of the Board and may be issued an employment contract for a period not to exceed three years. The Board establishes the compensation of the State Superintendent. One of the principal duties of the State Superintendent is to serve as the Board's chief executive officer, with the Board establishing the duties, powers, and responsibilities for this office. As provided in the School Code, the Board may delegate to the State Superintendent the authority to act on the Board's behalf, provided such delegation is made pursuant to adopted board policy and the powers delegated are ministerial in nature and not otherwise prohibited by law (Sec. 1A-4.B). To perform the many duties of this office, the State Superintendent has the assistance of a staff of professional individuals organized into several departments and units. The organizational structure of the State Board of Education staff includes departments concerned with: program services for local school districts; adult, vocational, and technical education; federal and state grants; budget and finance; planning and research; professional relations; specialized educational services; community services; governmental relations; and recognition and supervision. Each major department is divided into sub-units, which are responsible for specific departmental functions. From time to time these divisions are reorganized to meet changing needs at the state level.

Another responsibility of the State Superintendent of Education includes membership on several boards. By statute, the Superintendent is the ex-officio chairperson of the State Teacher Certification Board (Sec. 21-13), a member of the Conservation Education Advisory Board (698.3), the Illinois School Problems Commission (755), and the Illinois Educational Development Board (1053).

Machinery at the Intermediate Level

Introduction.--The legislatures of most states have seen fit to interpose intermediate units midway between the states and the local school districts, to represent the states in dealing with local school districts. This is particularly true where local districts are relatively numerous and comparatively small. In Illinois, counties were for many years the intermediate units of school administration. When

considering the educational structure in Illinois where, as late as 1945, there were 11,955 separate school districts, one can easily see why intermediate administrative structures were needed to coordinate just recording-keeping alone. The creation of these intermediate units served to decentralize the task of overseeing the schools and alleviated much of the burden which would otherwise have fallen upon the State Superintendent and his or her staff. Now, however, as districts are decreasing in number as the result of consolidation, the need for counties as intermediate units is being seriously questioned by many persons. What the future holds for intermediate units remains to be seen, but changes have occurred in the county offices. In many states, counties as administrative units are beginning to be consolidated, just as they have been in Illinois from county to regional units. Then, too, in some states the function of counties as units of school administration is being altered. Instead of being administrative units, they are becoming almost entirely service units--i.e., they are now providing skilled professional services to the underlying school districts. In Illinois, the machinery of the intermediate administrative units consists of regional boards of school trustees and regional superintendents of schools. The original 102 county units in Illinois have been reorganized into 57 regional offices.

All intermediate-level bodies in Illinois are composed of persons who are elected public officials. Each individual is elected by the voters of the territory contained within the jurisdiction of each body. Regional board members, regional board of school trustees members, and regional superintendents of schools, in order to be placed on a ballot, must file nominating petitions and a statement of candidacy, along with a statement of economic interest as required by the Illinois Governmental Ethics Act (Ch. 127, Sec. 601-101, et seq.). Elections for all officials are held on the first Tuesday after the first Monday in November in even-numbered years.

County Board.--In each county there is what is known as a county board, which is commonly referred to as a county board of supervisors. While this board is not primarily an education board, it does have a few educational functions. By statute, it is charged with the duty of providing the regional superintendent of schools (R.S.S.) with an office, furniture, and office supplies (Sec. 4-2). It also examines and approves or rejects reports of the regional superintendent (Sec. 4-3), allows travelling expenses (Sec. 4-4), examines financial statements (Sec. 4-7), audits bills (Sec. 4-5), approves bonds (Sec. 4-8), and authorizes employing such assistants as are needed to carry out the duties of the office (Sec. 4-6). In addition, it is authorized to remove the regional superintendent of schools from office for ne-

glecting or refusing to make the reports required, for violating the law, or failing to perform duties (Sec. 4-10).

Regional Board of School Trustees.--Each educational service region has a regional board of school trustees, which is an elective body with region-wide administrative responsibility for education. It consists of seven members, no two of whom shall be residents of the same congressional township unless there are fewer than seven townships in the region, and then no more than two shall be residents of the same township (Sec. 6-2). While this board has administrative authority in the region, its duties are comparatively limited. It acts as a referee in boundary disputes and is the legal body that holds title to property for certain districts (Sec. 7-28). As consolidation has progressed, the work of this body has declined. It exercises little if any influence over the educational programs of individual schools. Its main duties now relate to consolidation. Some persons question whether this board is still needed as a separate entity.

Just as the number of local school districts in Illinois has declined due to consolidation efforts, so too has the number of county or regional units involved in education. Beginning in 1971, Illinois moved away from each of the 102 counties being organized as an intermediate educational unit between the state and local districts, and mandated the consolidation of counties into educational service regions (Art. 3). Each region is composed of one or more counties, is administered by a regional board of school trustees as previously described, and elects a regional superintendent of schools (R.S.S.) as the chief administrative officer of the educational service region. Each region, whether composed of a single county or multiple counties, must contain a minimum of 33,000 inhabitants. If any region does not meet this population requirement, the State Board of Education is empowered to direct the consolidation of that region with another region or regions to which it is contiguous (Sec. 3A-4). Illinois currently has 57 educational service regions. However, since the population of each region is to be based on the most recent federal census data, this number may change in the future, as population shifts occur within each region and within the state.

Regional Superintendent of Schools.--Each county, except those that have been consolidated into multicounty educational service regions, has a regional superintendent of schools, formerly known as a county superintendent of schools, who is elected by the people for a term of four years. Qualifications are set by statute (Sec. 3-1). Among other things, the R.S.S. must possess a master's degree and must hold "a valid all-grade supervisory certificate or a valid state limited supervisory certificate, or a valid state life supervisory certificate, or a valid administrative certificate" (Sec.

3-1). Traditionally, this has been a significant and important office. The R.S.S. is an agent of the state, paid by the state to coordinate programs and records and to interpret state laws and regulations for the local schools. From earliest times this office has been a moving force in organizing local school districts into more practical educational units. In recent years, as the problem of coordinating an untold number of school districts has lessened, the R.S.S. has served the cause of school district organization in other ways. In many areas the R.S.S. has organized county-wide programs for "special education." In other cases, the R.S.S. has promoted the development of special education districts for areas including more than one county, and has, in fact, helped to set up still other intermediate structures which differ widely from the county structure. An example of this is the creation of cooperative structures to provide vocational and technical education.

While the region has, in addition to an R.S.S., a regional board of school trustees, the superintendent's influence is far greater than that of the board of trustees. The R.S.S.'s is the office that has provided educational leadership, while the activities of the board of trustees have been confined to administrative and routine functions almost exclusively. In the future the function of the R.S.S. will probably be expanded. One argument for the consolidation of smaller counties into larger service areas was to promote educational service by this intermediate district. The judgment of the law's effectiveness may well be based upon the additional educational service rendered.

Organization at the Local Level

Introduction.--In addition to its structure at the state level and the regional or county level, public education in Illinois is administered at the local level through the medium of school districts, which have been created by legislative enactment. These are of various and assorted sizes and widely varying school populations. Districts may be county-wide, as is the case in Jersey, Pope, Brown, Edwards, Jasper, and Schuyler counties, or they may be small, containing only a few square miles. These small districts are remnants of an earlier era of school district organization when each 4 square miles constituted a district. School districts vary in size, from the school district of the city of Chicago to rural districts which may contain as few as 25 or 30 students. Quite often, these districts have boundaries that bear no relationship to other units of government, such as villages, towns, cities, and townships. But, where the boundaries are coterminous with such other units of government, as is the case of the city of Chicago, the school

district remains a separate entity, entirely independent of such other governmental units, except as made so by statute.

Types of School Districts.--School districts in Illinois are classified into four main categories: (1) special charter districts--these were created by the legislature by special act at an earlier date (Art. 32) (no more are being created and none have been created since 1870); (2) board of director districts (Sec. 10); (3) board of education districts (Sec. 10-10); and (4) districts having populations exceeding 500,000 (Sec. 34-2). Chicago, Bloomington, Decatur, Peoria, Quincy, Rockford, Canton, Kankakee, Paris, and Springfield are examples of special charter districts. Princeton is the only special charter secondary district, while Joliet and Lake Forest are the only elementary districts operating as charter districts. Board of director districts are those with populations of less than 1,000 (Sec. 10-1). Board of education districts are those with populations of not fewer than 1,000 and not more than 500,000. They again may be classified into three categories: (1) elementary districts maintaining grades K through 8 only; (2) secondary districts maintaining grades 9 through 12; and (3) unit districts maintaining grades K through 12. The name, composition, and duties of school boards in Illinois vary according to district classification as follows.

a. Special charter districts.--The governing bodies of special charter districts may be designated as either boards of directors or boards of education, depending upon the charters that established them. In these districts, however, the boards have the powers and duties delegated to districts having populations of not less than 1,000 nor more than 500,000 and those powers and duties delegated to boards of county trustees. This is because special charter districts are not responsible to regional or township trustees. Article 32 describes the way that these districts operate, except for peculiarities growing out of their charters.

b. Board of director districts and board of education districts.--As already indicated, districts that are not created by special charter are of two classes--board of director districts if they have populations of fewer than 1,000 and board of education districts if they have populations of 1,000 but not more than 500,000. Depending upon whether or not they are consolidated districts, board of director districts have school boards of three or seven members. Board of education districts are governed by boards of seven members. In both cases, board members are elected. There are some slight differences in the powers of school boards in board of director and board of education districts, but in the main, their powers are similar. With both types of boards, their overall power is derived from the same source and exercised in the same manner. The General Assembly delegates to all local school boards certain specific

powers, some of which are mandatory and some discretionary. In some districts, the number of pupils has changed following their organization, and since no force is used to change organizational patterns, the reader may not be able to use the size of a district to determine the type of district.

The School Board.--As has already been stated, there are four kinds of school districts, each of which has its own type of governing board, generally referred to as a school board. These types are: (1) districts in cities having populations over 500,000, (2) special charter districts, (3) board of education districts, and (4) board of director districts. The administrative organization of each type of district will now be considered in turn.

a. Districts having populations over 500,000.--There is but one district in the state that falls into this category--the school district of the city of Chicago, and it is a special charter district. The school board of this district, which is legally called a board of education, consists of 11 members, appointed by the mayor, with the approval of the city council. The term of office of board members is five years, and each member holds office until his or her successor has been appointed and qualified. To be eligible for appointment, a person must be a citizen of the United States. Likewise, he or she must have been a resident of the city for at least three years immediately preceding appointment and a registered voter. Board members serve without compensation, and they may not hold any public office under the federal, the state, or any local governmental unit except that of notary public or member of the National Guard (Sec. 34.4). This district is governed by a separate article--Article 34 in the School Code. In this article will be found all information regarding the organization of the district and the duties of the board members. Since there is but one such district in the state, the duties of board members will not be commented upon here.

The Chicago public school district is unique with respect to the control the board of education exercises over the district's fiscal affairs. Unlike in any other district in Illinois, the Chicago school board does not exercise primary control over the approval of the district's budget. Public Act 81-1221 (1980) created the School Finance Authority to aid the financially troubled Chicago school district. Some of the more educational significant aspects of this law are: The Chicago School Finance Authority is governed by a five-member board of directors, two of whom are appointed by the Governor, with the approval of the mayor of Chicago, two are appointed by the mayor of Chicago, with the approval of the Governor, and one director, serving as the chairperson, is appointed jointly by the Governor and the mayor (Sec. 34A-301); the terms of all members of the school board terminated on April 30, 1980, and new board members were appointed

(Sec. 34-3); the maximum tax rate for educational purposes was reduced from 2.11 percent to 1.61 percent (Sec. 34-53); the state aid funds payable to the district under Section 18-8 were reduced by an amount equal to the budget for the operation of the Authority, and that amount was paid to the Authority under Section 18-8.9k; the Authority is empowered to issue general obligation bonds in an amount not to exceed $500 million (Sec. 34A-503); the board is required to submit budgets for the Authority's approval or rejection (Sec. 34A-405); and "... the power to approve or to reject the Financial Plans, Budgets, and Contracts of the Board ..." is given to the Authority (Sec. 34A-401).

The law creating this School Finance Authority was quickly challenged under the claim that it violated numerous sections of the Illinois constitution. The Illinois Supreme Court rejected this challenge and recognized the legal existence and functions of the Authority. 17/

b. Special charter districts.--In special charter districts, of which there are but 13 in Illinois, the charters provide for the selection of board members. The manner of selection varies from district to district, and since each such district is a separate case and therefore, is not of general interest, the methods of selection will not be further considered.

It should be noted, however, that under Section 32-1, the statute makes provision whereby a special charter district may, by vote of the electors, lose its existence and operate under the general school laws. Likewise, Section 32-11 provides that in all special charter districts that maintain schools under the general laws, if there is no provision in the special acts creating such districts for the election of school boards, boards of seven members shall be elected. Where such is the case, the board members shall have the same qualifications and be elected in the same manner as they are in board of education districts.

c. Board of education districts.--School districts having populations of not fewer than 1,000 and not more than 500,000, unless they are special charter districts, have, as their governing bodies, boards of education. These districts are generally referred to as board of education districts. The board of education of each such district shall consist of seven members, each elected for a term of four years (Sec. 10-10). Each member must be a citizen of the United States, at least 18 years of age, a resident of the state and the territory of the district for at least one year immediately

17. Polich v. Chicago School Finance Authority, 79 Ill.2d 188, 402 N.E.2d 247 (1980).

preceding the election, and a registered voter. A board of education member may not be a school trustee or a school treasurer. All vacancies on the board are filled by the remaining members for a term of office which extends to the next regular school election. However, if a vacancy should occur with less than 28 months remaining in the term of office, or if a vacancy should occur less than 88 days before the next regularly scheduled election, the person appointed shall serve the remainder of the unexpired term and no election to fill the vacancy shall be held. If the board fails to act within 30 days after the vacancy occurs, the regional superintendent of schools shall, within 15 days after the board has failed to appoint a member to fill the vacancy, appoint a person meeting the qualifications for this office (Sec. 10-10). The R.S.S. is also empowered to remove any member of a school board from office for failure to perform the official duties of this office (Sec. 3-15.5).

Within seven days after the election of board members, the statute requires the board to organize by electing its officers and setting a time and place for regular meetings (Sec. 10-16). The officers shall consist of a president and a secretary. The president must be chosen by the board from among its number, and shall serve for a term of two years (Sec. 10-13). The secretary is also elected for a term of two years and may be, but need not be, a member of the board. While board members serve without remuneration, the secretary may receive such compensation as shall be fixed by the board prior to the election. If the secretary is a board member, he or she may vote on all matters coming before the board (Sec. 10-14). In addition, a board of education in any county, outside Cook County, shall elect or appoint a treasurer. The treasurer, if not a member of the board, may be paid. However, if the treasurer is a board member, he or she serves without pay. The technical details respecting the duties of treasurers for different types of boards are found in Article 8 of the School Code.

While the board at its organization meeting shall determine the time and place of regular meetings, it may also hold special meetings when properly called. A special meeting may be called by the president of the board or by any three members of the board by giving notice in writing stating the time, place, and purpose of the meeting. Such notice may be given by mail 48 hours before the meeting is to be held or by personal service 24 hours before the meeting (Ch. 102, Sec. 42-02). Notice of regular meetings shall be given in the manner prescribed by statute and shall state the dates, times, and places of the meetings. Changes in these regular meetings must be made in accordance with an Act in Relation to Meetings (Ch. 102, Secs. 42.02 and 42.03).

Public notice of special meetings shall be given by posting a notice at the principal office of the board. In

addition, notice of the special meeting must be sent to all newspapers and news media representatives who have filed an annual request for such notices.

If a regular meeting schedule is to be changed, notice of such change shall be given to the requesting media (newspapers, radio, and television) and the notice of change shall be published in a newspaper of general circulation in the area. Any school district with a population of less than 500 in which no newspaper is published may post a notice of a change in the regular meeting schedule in at least three prominent places within the district, in addition to posting the notice at the principal office of the board or, if no such office exists, at the building in which the meeting is to be held (Ch. 102, Sec. 42.03).

Unless otherwise provided by law, all meetings of each public school governing body in Illinois must be open to the public, and all business must be transacted in open session. School boards may enter into "closed," or "executive," sessions when permitted by the Act in Relation to Meetings (Ch. 102). Specifically, a local public school board of education must meet in open session, except when collective negotiating matters between the public employers and their employees or representatives are being considered; when the acquisition of real property is being considered; when the constitution provides that a secret meeting may be held; when information regarding appointment, employment, or dismissal of an employee or officer is being considered or when testimony on a complaint lodged against an employee or officer is being heard to determine its validity; when, as required by federal regulations, student disciplinary cases are being heard or when matters relating to individual students in special education programs, as defined by Article 14 of the School Code, are being discussed; or when the appointment of a member to fill a vacancy on the board is being considered.

In 1981, Public Act 82-378 was enacted, and it permits local school boards to hold closed meetings to discuss litigation when an action against or on behalf of the board has been filed and is pending in a court or administrative tribunal, or when the board finds that such an action is probable or imminent; to receive reports from advisory committees appointed by the board to provide professional consultation on matters germane to its field of competence; to consider matters of professional ethics or performance; or to establish reserves or settle claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act if otherwise the disposition of a claim or potential claim might be prejudiced. Final actions, however, must be approved at a public meeting (Ch. 102, Sec. 42).

While the statutes are replete with sections that have implications for board members and specify their duties, the

School Code, beginning with Section 10-20, spells out the numerous duties that are specifically assigned to board members. Article 10 dealing with school boards, their duties, etc., may be adopted by special charter districts (Sec. 10-23.7).

d. Board of director districts.--School districts of fewer than 1,000 inhabitants which are not governed by any special act are governed by boards of directors. Such a board shall consist of three members, unless the district is a consolidated district, in which case the board shall consist of seven members (Sec. 10-1). Members of boards of directors are elected and must meet the same qualifications and restrictions as board of education members. If a vacancy occurs, the remaining members, within 30 days, shall, by appointment, fill it until the next regular election. If the board members fail to fill a vacancy, the regional superintendent of schools shall appoint a qualified person to fill the vacancy within the next 30 days.

Within seven days after the election of school directors, the directors shall meet and organize by appointing one of their number president and another clerk (Sec. 10-5). The directors shall hold regular meetings at such times as they may designate, and they may hold special meetings at the call of the president or any two members (Sec. 10-6). Public notice of the meetings shall be given as required for meetings of all public boards, including boards of education (Ch. 102, Secs. 42.02 and 42.03).

The clerk or secretary shall keep in a punctual, orderly, and reliable manner a record of the directors' official actions, and it shall be signed by the president and the clerk. Such records shall be submitted to the district treasurer for approval and inspection on the first Monday of April and October and at any other times when required by the treasurer. On all matters relating to the expenditure of funds, the clerk must keep a record that shows the yeas and nays. If the district does not employ a superintendent, the clerk shall also keep the financial records of the district (Sec. 10-7). No director may have a financial interest in any contract made by the board, except as provided by Section 10-9 of the School Code. Violation of this prohibition subjects a board member to a fine of not less than $25 nor more than $500 and to a prison term of not less than 1 month nor more than 12 months (Sec. 10-9).

The duties of boards of directors, like those of boards of education, are found scattered throughout the statutes. Most of these are specifically mentioned in the School Code, beginning with Section 10-20.

The elected board of education and board of director members at the local level must meet the same requirements

of filing nominating petitions, statements of candidacy, and statements of economic interest as persons seeking intermediate-level offices. The election dates are not the same for each type of board. Candidates for boards of education in all school districts, including special charter districts having populations of at least 100,000 but not more than 500,000 that have adopted Article 33 of the School Code, are elected on the first Tuesday of April in odd-numbered years. All other boards of education and boards of directors not operating under Article 33 are elected on the first Tuesday after the first Monday in November in odd-numbered years. All local board elections in Illinois are nonpartisan, and board candidates are not required to indicate political party affiliation to be elected to office.

The Superintendent of Schools.--In Illinois, each school district, except in those districts where there is only one school with fewer than four teachers, shall appoint a superintendent of schools. The superintendent shall have charge of the administration of schools under the direction of the school board or board of education. By statute, the superintendent is authorized to make recommendations to the board regarding "the budget, building plans, the location of sites, the selection of teachers and other employees, the selection of textbooks, instructional material, and courses of study" (Sec. 10-21.4). In addition, the superintendent shall be responsible for keeping the records and accounts of the board as required by the board and shall aid the board in making reports. Likewise, the superintendent shall perform all other duties delegated by the board (Sec. 10-21.4).

Then, too, the superintendent shall assist the truant officer in the performance of the truant officer's duty and furnish any information which is pertinent to the performance of that duty (Sec. 26-9). With respect to pupils, the superintendent may, if authorized to do so by the board, suspend pupils guilty of gross disobedience or misconduct for a period not to exceed 10 school days (Sec. 10-22.6).

Without a doubt, the most important duty of a school board is that of employing the superintendent of schools. This is because the job of the board is to see that the schools are efficiently and adequately administered, not to administer them themselves. To insure good administration, the board must employ a good administrator. To the administrator or superintendent the board delegates the authority necessary to see that an efficient system results. In delegating this authority, the board must make certain that it does not divest itself of the discretionary authority vested in it by statute. What it should do is exercise its discretion by making policy and then delegate to the superintendent the ministerial duty of carrying out the policy.

The extent to which a school board is successful in developing a good school system is largely dependent upon its selection of the right person as superintendent of schools. If it is successful, and if it delegates to the superintendent the necessary authority, the system will be educationally efficient. Therefore, in choosing its administrator, the board should act in a thorough and systematic manner.

CHAPTER V

Legal Status of Teachers

"It may be that the evidence fails to show the highest possible qualifications, or a talent for . . . [the teacher's] profession equal to the most eminent and successful teachers. But the law requires no such qualifications; it only requires average qualifications and ability, and the usual application to the discharge of the duties of a teacher to fulfill his contract."—*Neville* v. *School Directors*, 36 Ill. 71 (1864).

Introduction

In Chapter I, the importance of teachers being well informed concerning their legal status was commented upon. The reason for this is that many of their professional duties and obligations, as well as their rights, are determined by the status accorded them by law. If, for example, teachers are officers, all laws relating to public officers are applicable to them. Otherwise, they are not.

Teachers Are Employees and Not Officers.--The question of whether a teacher is an employee or an officer is one that arises, from time to time, in the interpretation of specific statutes, or laws. For example, where the statute prescribes the method of removing a public officer, the question arises as to whether a teacher is a public officer within the meaning of that statute. Likewise, where the constitution or statute provides that a person holding one public office is not eligible to hold another, the question arises as to whether a teacher is a public officer, and if so, is ineligible to hold a public office such as that of mayor.

In Oregon the courts were asked to rule on the question of whether one who was a member of the Oregon House of Representatives was eligible for employment as a teacher in the public schools, under the constitution, which provided that no person charged with official duties under one department of government might exercise any of the functions of another department. 1/ In ruling that the member of the House could not hold a position as a teacher, the court considered the status of teachers, saying:

> A public school teacher is an employee, employed in a public capacity.... Teachers are employees hired by a [s]tate agency whose function it is to serve the state in the exercise of its sovereign power and duty as mandated by Art. VIII, Sec. 3 of the Oregon Constitution.
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> A teacher's position in the scale of the relative importance of state employees serving a department of government is greater than most all others....
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> .....

1. Monoghan v. School District, 211 Ore. 360, 315 P.2d 797 (1957).

> It is through the teacher, not the school district, that the state's standards of education excellence are disseminated. When so engaged, they are exercising one of the functions of the executive department of our state government. 2/

Likewise, in Pennsylvania, it has been held that professional employees are public employees and not public officers. In a case decided before the tenure law was passed, it was held that a school medical inspector, whose status is analogous to that of a teacher, was not an officer but an employee. 3/ In this case a school board attempted to remove a medical inspector from office under the authority of a constitutional provision providing that appointed officers could be removed at the pleasure of the appointing power. The court held this provision did not give the board the authority it attempted to exercise because the medical inspector was not an officer within the meaning of the provision. Again, in Pennsylvania, in one of the first cases brought under the tenure law, the question of whether teachers were employees or officers was paramount. It was contended that the law was unconstitutional on the grounds that it provided for a method of removing teachers which was in conflict with the constitution, which provided that officers were removable at the will of the appointing power. The court ruled that the law was constitutional, that teachers were not officers, and that the constitutional provision was not applicable to them. 4/ Court decisions in West Virginia 5/ and Georgia 6/ in similar cases are to the same effect. The School Code, while not specifically authorizing teachers service in the Illinois General Assembly, does require a board to grant a leave of absence upon request to a teacher elected to serve in the legislature. A teacher employed to replace one serving in the General Assembly does not acquire tenure under the provisions of 24-11 (Sec. 24-13). The Attorney General of Illinois has issued a legal opinion indicating that, while a local board has no discretion in grant-

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2. This case should not be interpreted as holding that it is a general principle of law that teachers may not serve as members of the legislature. It only holds that this is in violation of the Constitution of the state of Oregon. It is cited here solely because of the view the court held regarding the legal status of teachers.
3. Kosek v. Wilkes Barre Township School District, 314 Pa. 18, 170 A. 279 (1934).
4. Malone v. Hayden, 329 Pa. 213, 197 A. 344 (1938).
5. State v. Martin, 112 W.Va. 174, 163 S.E. 850 (1932).
6. Board of Education v. Bacon, 22 Ga. 72, 95 S.E. 753 (1918).

ing the leave as requested by the teacher, the teacher-legislator must request the leave in order to inform the school board of the impending absence. The extent and duration of the leave is viewed as being determined by the teacher-legislator at the time the request is made, and a board may not require the leave to be for a greater or lesser amount of time than requested (Opinion of the Attorney General of Illinois, No. S-1448, June 29, 1979).

In another type of case, Pennsylvania courts have also held, by implication at least, that teachers are employees and not officers. On at least two occasions, Pennsylvania courts have been asked to rule on the question of whether quo warranto was the appropriate remedy to test the right of a teacher to a position. 7/ On the ground that this remedy is one that is available only for the purpose of testing the title of an officer to hold office, the teachers in both cases were denied the right to bring such an action.

With reference to local district superintendents, this unanimity of opinion is not so obvious. On the whole, it appears that most courts consider teachers to be employees, although enough courts have held them to be officers for some specific purposes, thus warranting the statement that there is no general agreement on the matter. Most courts, in differentiating between officers and employees, hold that one criterion of an officer, as opposed to an employee, is that the holder of an office possess a portion of the sovereign power of government. When judged by this criterion, a superintendent, as well as a teacher, would seem to be an employee and not an officer.

School board members, however, are held to be school officers. Consequently, laws which, by their language, apply to, or affect, school officers are applicable to board members only and not to teachers nor, generally, to chief school administrators unless they specifically so state. An obvious exception to this general statement is, of course, the Illinois public school teacher who is elected to a local board of education of a district in which he or she resides but is not an employee. The statutory prohibition against a teacher being appointed to the State Board of Education, and thus an official at this educational level, were discussed in Chapter IV.

Teachers Are State Employees.--Having established that teachers are employees rather than officers, we must determine whether they are employees of the state or employees of local agencies of government. By virtue of the fact that ed-

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7. Commonwealth v. Frank, 4 Pa. Co.Ct. 618 (1836); Phillips v. Commonwealth, 98 Pa. 394 (1881).

ucation is a state function, teachers are held to be employees of the state and not of the local school district. Nevertheless, in a few cases, courts have ruled that, within the meaning of particular laws, teachers were municipal employees. Such a decision was rendered in New York. There it was held that a provision of the New York City Charter--"If any employee of the city shall refuse, before any legislative committee, to testify or answer any question regarding the official conduct of any employee of the city on the ground that his answer would tend to incriminate him, his term of office or employment shall terminate..."--was applicable to teachers. 8/ On appeal, this decision of the lower court was upheld. 9/ It is significant, however, that, in this case, in a dissenting opinion, two justices took issue on the question of whether teachers were city employees and, in so doing, gave a very clear dissertation on the status of teachers which appears to represent sound law. The dissent, in part, stated:

> ... [Appellants] are not officers of the city.... Neither are they employees of the city. They are employed by the respondent board, which like the Board of Education of the City of New York, is a corporation created by the State, entirely separate and apart from the City of New York, insofar as the administration of the educational system of the city is concerned.... In the administration of the educational system, such boards are not departments of city government,... nor do they act as the agents of the city.... Teachers employed in New York City contract with the Board of Education or the Board of Higher Education, and not with the city. The city does not hire them, nor may it prescribe their duties, or qualifications, or fix their salaries. In fact none of the usual characteristics of the relation of employer and employee exist, as between the city and teachers employed in the city schools.

In furtherance of the concept that teachers are state, not local, employees, it should be noted that the position of public school teacher is created by the state as the result of constitutional and/or statutory action. Likewise, the powers and duties of these teachers are fixed, largely,

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8. Daniman v. Board of Education of City of New York, 118 N.Y.S.2d 487, 202 Misc. 915 (1952).

9. Slochower v. Board of Higher Education of City of New York, 122 N.Y.S.2d 286, 282 App. Div. 718 (1953). Reversed, 350 U.S. 511 (1956).

by law which has been passed by the state's governing body, the legislature. Also, as previously discussed, it is the state and not a local board of education that determines the qualifications of who may be certified as public school teachers in Illinois.

Therefore, while teachers are employed to teach in a particular school district and even in a particular school in that district, they are not to be thought of as local employees, such as the employees of a city or village. They are state employees and are governed by laws that are applicable to state employees in general.

Teachers Stand "in Loco Parentis" to Pupils.--No discussion of the teachers' legal status is complete unless it considers the relationship of teachers to pupils. In some states the statute specifically states that teachers stand in loco parentis to their pupils. This means that they stand "in the place of the parents." In others, the statute, without using this exact language, makes it clear that teachers occupy or stand in the parents' place.

In Illinois, the statute does not use the term "in loco parentis." Instead it states that teachers "stand in the relation of parents and guardians to the pupils" (Sec. 24-24). Specifically, this statute reads as follows:

> Teachers and other certificated educational employees shall maintain discipline in the schools, including school grounds which are owned or leased by the board and used for school purposes and activities. In all matters relating to the discipline in and conduct of the schools and the school children, they stand in the relation of parents and guardians to the pupils. This relationship shall extend to all activities connected with the school program and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents or guardians.
>
> Nothing in this Section affects the power of the board to establish rules with respect to discipline.

In the absence of any statute covering the matter, the courts also appear to be in agreement that teachers stand in loco parentis to their pupils. This common law rule has important implications for teachers. It gives them the authority to administer corporal punishment when warranted, provided it is reasonable in character; and, in some cases, it shields them from charges of assault and battery. The Supreme Court of Michigan, in a case decided in 1937, com-

mented on the meaning of the "in loco parentis" doctrine. It said:

> At least in a limited sense the relation of a teacher to a pupil is that of one in loco parentis. We are not here concerned with the law applicable to punishment of a pupil by a teacher; but rather with the law applicable to the duties of a teacher in the care and custody of a pupil. In the faithful discharge of such duties the teacher is bound to use reasonable care, tested in the light of the existing relationship. 10/

Likewise, an Alabama court had the following to say on the matter under consideration:

> A schoolmaster is regarded as standing in loco parentis and has the authority to administer moderate correction to pupils under his care. To be guilty of an assault and battery, the teacher must not only inflict on the child immoderate chastisement, but he must do so with legal malice or wicked motives or he must inflict some permanent injury. 11/

One exception to the principle of in loco parentis for teachers in Illinois deals with corporal punishment. According to State Board of Education rules, corporal punishment may not be used by a school district as a penalty for misbehavior if parents submit a written request that corporal punishment not be administered to their child or children. 12/ In addressing the validity of this rule, one Illinois circuit court found the State Board of Education lacked the authority to interfere with the authority granted to local boards in determining appropriate punishment in order to maintain discipline in schools. 13/ In the view of this court:

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10. Gaincott v. Davis, 281 Mich. 515, 271 N.W. 229 (1937).
11. Suits v. Glover, 260 Ala. 449, 71 So.2d 49 (1954).
12. The Illinois Program for Evaluation, Supervision, and Recognition of Schools, State Board of Education Document Number 1, October 1, 1977, Sec. 2-8.
13. Donaldson v. Board of Education for Danville School District No. 118, No. 80 MR 258 (1980).

> Section 24-24 of Chapter 122 provides that teachers and other certificated educational employees shall maintain discipline. In relation to discipline they stand in the relation of parents and guardians. The local School Boards can adopt rules relating to discipline. The courts in Illinois have consistently upheld the right of corporal punishment. Now we have the State Board of Education placing limits therein under some supposed rule-making power.
>
> The State Board of Education is created by Chapter 122, Article IA. The powers and duties are contained in Article IA and Article 2. ... The Articles do not indicate that the State Board can interfere with the discipline discretion placed in the local schools by Section 24-24. A rule made by the State Board must be based upon the duties of Article[s] 1A and 2. The rule allowing parents to prohibit corporal punishment has no such basis and is void.

In this connection, it should be noted that while the doctrine of in loco parentis gives the teacher the right to administer corporal punishment, it does not give the teacher all the authority over the child which is vested in the parent. A Pennsylvania case is in point. 14/ This was an action for damages brought against two teachers for injuries received by a pupil when they immersed his hand in scalding water as treatment for an infected finger. In holding them liable, the court said:

> Under the circumstances, we think it clear that these defendants are legally liable for the damages resulting from their tort. These teachers stood in loco parentis to the child, but there is nothing in that relationship which will justify defendants' acts. Under the delegated parental authority implied from the relationship of teacher and pupil,... there is no implied delegation of authority to exercise her lay judgment, as a parent may, in the matter of treatment of injury or disease suffered by a pupil.
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> Treatment of the minor plaintiff's hand was not necessary in this case; defendants were not acting in an emergency.... Whether treatment of

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14. Guerriere v. Tyson, 147 Pa. Supp. 239, 24 A.2d 468 (1942).

> the infected finger was necessary was a question for the boy's parents to decide. The status of a parent, with some of the parent's privileges, is given a school teacher by law in aid of the education and training of the child ... and ordinarily does not extend beyond matters of conduct and discipline.

Illinois courts are in general agreement with these interpretations of the legal status of teachers standing in loco parentis. In a case specifically dealing with the question of teachers standing in place of parents in public schools, the Illinois Supreme Court has indicated that:

> We fully recognize the desirability and indeed the absolute necessity that teachers be able to maintain discipline in the schools, including reasonable use of corporal punishment. The legislature has recognized the right and duty of teachers in this regard (24-24).... It is clear, however, that there is nothing in the foregoing statutory provision which suggests that teachers should have any greater rights or be entitled to any greater protections than parents. To the contrary, since teachers by statute stand in loco parentis in matters of discipline of students within their charge in the schools, we think it follows that teachers should be subject to the same standard of reasonableness which has long been applicable to parents in disciplining their children. 15/

While the court recognized this teacher status in Ball, this teacher's use of corporal punishment in excess of the standard of reasonableness caused the teacher to be found personally guilty of battery and fined. It is clear, therefore that Illinois courts recognize the teacher's in loco parentis status but do not extend this status to protect a teacher's actions in all cases involving discipline. A common conclusion, with respect to administering corporal punishment in the process of enforcing discipline, reached by Illinois courts limits the use of this disciplinary measure in two basic ways. First, a teacher may not wantonly or maliciously inflict corporal punishment as a provision of the in loco parentis status. If wanton or malicious punishment is used, a teacher may be personally liable. 16/ Second, if

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15. People v. Ball, 58 Ill.2d 36, 317 N.E.2d 54 (1974).
16. City of Macomb v. Gould, 104 Ill. App.2d 361, 244 N.E.2d 634, (1969).

a local board of education prohibits the use of corporal punishment by teachers, this restriction must be followed within the district governed by that board. In a case where a tenured teacher admitted resorting to the use of corporal punishment on several occasions, and this practice was expressly forbidden by board rules, the teacher's behavior was judged irremediable and his dismissal was upheld. 17/

One additional aspect of the in loco parentis status warrants mentioning. Occasionally, teachers are personally sued for damages due to injuries to students whom the teachers are responsible for supervising. The Illinois Supreme Court has held that, while the employing board of education may be held responsible for student injuries, the individual teacher, who stands in loco parentis, may not be held personally liable for damages due to alleged negligent conduct. As stated by the court:

> In the interest of student-teacher harmony, litigation between them should not be encouraged--absent wilful and wanton conduct. In Illinois, children may not maintain actions for negligence against their parents, although actions involving wilful and wanton conduct are permissible. Under sections 24-24 and 34-84a of the School Code teachers ... stand in the place of parents and guardians. Hence, they are immune for negligent actions.
>
> .....
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> Another public policy consideration which we find relevant is borrowed from the policy consideration in support of the immunity of public employees (Ill. Rev. Stat. 1975, ch. 85, par. 2-201 et seq.). If we were to place the duty of ordinary care ... on teachers, we would burden them to the extent that a teacher might become immobile in the performance of his obligations. They would "not be free and unhampered in the discharge of their duties, since they would live in fear that each judgment they made would bring a lawsuit." Moreover, a proliferation of such actions for negligence would drain teachers' time, encourage second-guessing teachers' judgment by courts, and quite possibly discourage persons from the career of teaching. 18/

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17. Carter v. State Board of Education, 90 Ill. App.3d 1042, 414 N.E.2d 153, (1980).

18. Thomas v. Chicago Board of Education, 77 Ill.2d 165, 395 N.E.2d 538, (1979).

Under Illinois Statutes

Classes of Teachers.--Public school teachers are, by statute, classified into four groups. In addition, there are college students, usually seniors, who, while not yet teachers, qualify, in part, for teaching. Such student teachers are without legal status since they do not possess the all-important certificate. (See Chapter X.) They are, however, recognized in statutes dealing with liability (Secs. (10-22.20 and 10-22.3).

The certified teachers who enjoy the lowest legal status are substitute teachers, since they usually work on a per diem basis without tenure and without annual contracts. A second class of teachers consists of those who are teaching on a probationary basis--for two or three years--and who are covered by annual contracts. A similar, but possibly different, class includes those teachers hired on a one-year basis to replace other teachers who are serving in the General Assembly or in the armed services. Then there are tenured teachers--the most numerous class. These are found in both the city of Chicago and in downstate Illinois. In addition, there are principals, supervisors, superintendents, and others who, as professional employees, are required to hold teachers' and/or administrators' certificates, even though they rarely, if ever, teach in the classroom.

In addition, within the state there is a relatively large number of persons who are certified to teach but who are not employed as teachers or administrators. This group includes many retired teachers who may, however, teach only a limited number of days or hours in any school year without losing pension rights. Such teachers retain their status and eligibility as beneficiaries in the retirement system. (See Chapter IX.)

Definition of "Teacher."--The statutes define the term "teacher" in different ways. Under the teacher tenure law, teachers are defined as "any or all school district employees regularly required to be certified under laws relating to the certification of teachers..." (Sec. 24-11). The law governing the Teachers' Retirement System defines "teacher" as "any teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, business manager, school nurse, or librarian who teaches or is employed in the public common schools ... and who is certified under the law governing the certification of teachers." (See Chapter IX.)

In the school district of Chicago, the term "teacher" as used in respect to appointments and promotions means all members of the teaching staff and all principals, but it excludes the general superintendent of schools, assistant and

district superintendents, and members of the board of examiners (Sec. 34-84).

Superintendents and Principals Are Teachers for Tenure Purposes.--Inasmuch as Section 24-11 provides that tenure status is applicable only to teachers and teachers are defined as "any or all school district employees regularly required to be certified," it is not surprising that Illinois courts have recognized a legal tenure status for administrators. This places the legal emphasis on individuals being certified employees of a school district rather than teachers at a specific grade level, within a subject area, in a particular classroom or attendance center, or in an administrative position. Therefore, superintendents, principals, and other administrative personnel may acquire teacher-tenure status in a district as certified employees. This position has been tested in cases involving superintendents 19/ and principals. 20/ Illinois courts are unanimous in the opinion that school administrators may hold tenure as certified employees of a school district but not as administrators. In 1956 the Supreme Court of Illinois, in interpreting the teacher tenure law, ruled that for tenure purposes, superintendents should be included within the meaning of the term "teacher." This landmark case for the first time clarified the uncertain status of school administrators throughout the state. The court, pointing out that "it was the policy of the legislature to include within the Teacher Tenure Law only those employees required to be certified...." said:

> In 1951 section 21-1 of the School Code was amended to provide: "No one shall be certified to teach or supervise in the public schools ... who does not hold a certificate of qualification..." (Ill. Rev. Stat., 1951, ch. 122, par. 21-1). We recognize that this subsequent legislation does not afford proof of prior status of the law; but the force of the long continued administrative construction of the school law requiring the certification of superintendents and public acquiescence therein, coupled with the later statutory enactment in conformity thereto, leaves us with the inevitable conclusion that superintendents are, under present law, and were under prior law, "teachers" within the definition of the Teacher Tenure Law. 21/

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19. Lester v. Board of Education of School District No. 119, 87 Ill. App.2d 269, 230 N.E.2d 893 (1967).
20. Van Dyke v. Board of Education of District No. 57, 115 Ill. App.2d 10, 254 N.E.2d 76 (1969).
21. McNely v. Board of Education of Community Unit School District No. 7, 9 Ill.2d 143, 137 N.E.2d 63 (1956).

In a later section, a description will be presented explaining why superintendents and principals in Illinois public schools waive certain tenure privileges while they are employed under multi-year contracts.

Status Governed by Certification and Contract.--Teachers have been awarded special legal status through the enactment of certification laws and through the strict interpretation of these laws by the state courts. The courts have ruled repeatedly that only properly certified persons may teach and that only individuals who are certified may be called teachers. 22/ Only employed teachers enjoy all the privileges granted by virtue of their status as teachers. Teachers who are not employed as teachers or administrators have a legal status limited to their possession of a license to teach.

The legal status of teachers who receive appointments to teach is both clearly defined and carefully protected. When boards of education appoint them, teachers have a legal obligation to conform to the law. Teachers, themselves, also have a personal obligation to ascertain whether their appointments meet legal requirements. While the law protects teachers in the manner of their appointment, fully qualified teachers with certificates are not assured or guaranteed employment by virtue of holding such certificates. A board of education is within its legal rights in refusing to employ any teacher, provided it does not do so because of color, race, sex, nationality, religion, or religious affiliation (Sec. 24-4). In addition, the Illinois Human Relations Act, along with several federal civil rights statutes, prohibits discrimination in employment on the basis of race, color, religion, sex, national ancestry, physical or mental handicap unrelated to the ability of the individual, and an unfavorable discharge from the military service (Ill. Rev. Stat. Ch. 68, Sec. 1-101, et seq.).

Status and Minimum Salary Legislation.--The state minimum salary law for teachers also permits teachers a special legal status in respect to salary (Sec. 24-8). However, a board of education has the right to employ the less well qualified teacher over the better qualified teacher. Thus, the fully qualified and highest certificated teacher is not completely or clearly protected against the competition for a teaching position from a provisionally certified teacher who is less well qualified and who is paid less under the minimum salary law.

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22. School Directors v. Newman, 47 Ill. App. 364 (1893); Cramer v. Board of Education, 245 Ill. App. 172 (1924).

Tenure as a Factor in Determining Status.--While there is some disagreement among the courts regarding the question of whether a tenure statute creates a contractual relationship between the teacher and the state, the weight of authority is that a tenure statute is not in the nature of a contract. 23/ (See Chapter VIII.) Back of this line of thinking is the presumption that an act of the legislature is only an expression of current legislative policy and that one legislature should not be regarded as having intended to bind the hands of future legislatures unless this is clearly the intent of the legislation. In the case of tenure laws in two states--Indiana and Alabama--the courts have, however, held that they created contractual relationships. 24/ In both cases the courts based their thinking on the intent of the legislatures, as derived from a study of the wording of the statutes. Based on the view of the majority of courts that have ruled on the subject, it seems that the legislature may amend, modify, or even repeal a tenure law without impairing the rights of teachers.

Status and Retirement Legislation.--With respect to the state compulsory retirement system, teachers have contract rights, as interpreted by the Illinois Supreme Court. The position taken by the court is that a contractual relationship is established between the teacher and the state when the teacher voluntarily assumes employment as a public school teacher, agreeing thereby to contribute a percentage of all salary to the Teachers' Retirement System. 25/

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23. Phelps v. Board of Education, 300 U.S. 319, 65 S.Ct. 68 (1937); Morgan v. Potter, 298 N.W. 763 (1941).
24. Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 58 S.Ct. 443 (1938); Faircloth v. Folmar, 40 S.E.2d 697 (1949).
25. Raines v. Board of Trustees, 365 Ill. 610, 7 N.E.2d 489 (1936).

CHAPTER VI

Teacher Certification

"A certificate to teach in the public schools is merely a license granted by the state, and is revocable by the state. . . ."—*Mars* v. *Matthews*, 270 S.W. 586 (1954).

Introduction

The state of Illinois, like all of the other states, has the authority to establish whatever qualifications it chooses for certifying its teachers. Since education is a function of the state, the authority to certificate teachers is vested in the state. In most states this function is discharged through acts of the state legislature. In Illinois the provisions concerning eligibility for the various kinds of certificates are contained in Article 21 of The School Code of Illinois.

The Legal Nature of Teaching Certificates

A teaching certificate is in the nature of a commission, permit, or license which is issued by the state. It is, in a real sense, a certification from the state to the local school districts that the holder of the certificate is deemed, by the state, to have met the necessary qualifications for teaching. It bestows upon a teacher certain rights and privileges which are not common to all people.

However, a teaching certificate is not in the nature of a contract with the state or with any other agency. Nor does it give the holder any right to a teaching position. Rather, it is in the nature of a prerequisite to an individual's entering the profession of teaching and can properly be considered as the first qualification for teaching.

While certification of teachers by various local officials existed by statute in Illinois since the mid-1800s, it was not until 1914 that this function was vested in the state's authority. Prior to the state's assumption of this responsibility, two principles regarding certificates had been established and remain basically intact today. One Illinois court decision prohibited teachers from receiving any compensation from public funds for failure to hold the proper certificate. This principle has subsequently been incorporated into the School Code prohibition that no pay from public money may be made to any teacher unless, at the time of the teacher's employment, a certificate demonstrating proper qualifications has been obtained. In addition, with respect to dismissal actions taken against a properly certified teacher, the certificate was viewed as constituting "prima facie" evidence that the teacher was competent and that the local school governing board bore the burden of proof in showing the teacher was incompetent or was guilty of neglect of duty. 1/ Another court recognized that certifi-

1. Casey v. Baldridge, 15 Ill. (Smith) 65, (1853).

cation requirements were established as minimums--that the teacher is required to possess, at a minimum, the qualifications required by the certifying agent. 2/

Issuance of Certificates

The actual issuance of the certificate for all teachers employed outside the city of Chicago is the responsibility of the State Teacher Certification Board, which is a division of the State Board of Education. The certification of teachers for the city of Chicago is accomplished through this district's three-member board of examiners, who issue appropriate certificates gratuitously to candidates who pass a required test of character, scholarship, and general fitness (Sec. 34-83). The 14-member State Teacher Certification Board operates not only under statute but also under administrative policies adopted in consultation with the State Board of Education. Membership on this board is prescribed by statute and consists of the State Superintendent of Education, or a representative appointed by the State Superintendent, and this individual serves as ex-officio chairperson; four administrative or faculty members of public or private colleges or universities located in Illinois; two administrators and six classroom teachers in the public schools; and one regional superintendent of schools (Sec. 21-13). Every certificate must be registered and renewed periodically through the regional superintendent of schools who supervises and has control over the school employing the teacher seeking renewal or registration of a certificate (Sec. 21-14).

The state of Illinois has been involved in certifying public school teachers since 1865. Although certification at that time was for first and second grades only, teachers were required to meet standards such as being of good moral character and being qualified to teach subjects such as English grammar, penmanship, arithmetic, and United States history. As was true in 1865, a certificate to teach in the public schools is not considered to be a contract to teach. It is a license issued by the state permitting the teacher to teach if employed by a local board of education (Sec. 10-20.7). The general requirements for issuing the certificate are as follows: good character, good health, United States citizenship or having filed a declaration of intent to become a citizen of the United States, and attainment of the age of 19 years (Sec. 21-1). In addition, Section 21-1 provides that no persons otherwise qualified to teach shall

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2. Neville v. School District No. 1, 36 Ill. (Ewell) 71, (1864).

be denied the right to be certified because of physical handicaps including, but not limited to, visual and hearing handicaps, and school districts are prohibited from refusing to employ teachers on such grounds if the persons are able to carry out the duties of the teaching positions. In addition, most certificates currently issued require a teacher to have earned a bachelor's degree from a recognized institution of higher learning, with some certificates requiring specific course content.

No one may legally teach or supervise in a downstate public school, or receive payment for teaching or supervising from any part of any public school fund, without a certificate of qualification issued by the State Board of Education, or the State Teacher Certification Board, and a regional superintendent of schools, except members of the armed forces who teach subjects in the Reserve Officers' Training Corps in any school.

To be fully certified, teachers must also pass a written examination "to the satisfaction of the certifying authority upon the provisions and principles of the Constitution of the United States and of the State of Illinois" (Sec. 21-1). An examination administered by a fully recognized teacher-training institution in Illinois will fulfill this requirement, as will an examination written and graded in the office of the regional superintendent of schools.

Kinds of Certificates

The grades of certificates now authorized are:

1. Early Childhood
2. Elementary
3. High School
4. Special
5. Substitute
6. Provisional
7. Provisional Vocational
8. Temporary Provisional Vocational
9. General
10. School Service Personnel
11. Transitional Bilingual
12. Administrative

Some forms of certification are no longer issued by the State Teacher Certification Board but are considered valid certificates in Illinois. For example, elementary supervisory, all-grade supervisory, and life certificates are

valid so long as their holders keep them in force by proper registration procedures. In addition, some certificates are issued for special conditions or purposes, i.e., temporary certificates for participants in approved training programs for exchange students (Sec. 21-10.2).

For the more common forms of certification where student teaching is a requirement, it is possible for the State Teacher Certification Board to substitute five years of successful teaching experience for the student teaching requirement if a certificate was valid prior to July 1, 1975, and to substitute graduation from a recognized institution of higher learning with a bachelor's degree, in which the candidate has earned at least 120 semester hours with a minimum of 16 semester hours in professional education (Sec. 21-2). Candidates for certificates issued after September 1, 1982, in the areas of early childhood, elementary, special, and high school education must meet the coursework which includes instruction in the psychology of the exceptional child, the identification of the exceptional child, including, but not limited to, the learning disabled, and methods of instruction for the exceptional child, including, but not limited to, the learning disabled.

Early childhood, elementary, high school, and special certifications have several requirements in common. Each is valid for a period of four years. Each requires a candidate to be a graduate from a recognized institution of higher learning, earning a bachelor's degree with no fewer than 120 semester hours. Each requires that the applicant must have completed a minimum of 16 semester hours in professional education, with 5 hours being in student teaching under competent and close supervision. And, each requires that the candidate be recommended by a recognized institution as having completed an approved program of preparation, which includes academic and professional courses approved by the State Superintendent of Education, in consultation with the State Teacher Certification Board.

Early Childhood Certificate.--The early childhood certificate is a license to teach children up to six years of age, exclusive of children enrolled in kindergarten, in facilities approved by the State Superintendent of Education. Within the minimum 120 semester hours, this certificate requires professional education, human development or early childhood instruction with practical experience involving supervised work with children under six years of age. The requirements for this certification category in Illinois became effective July 1, 1981.

Elementary Certificate.--This certificate is valid for teaching in the kindergarten and lower nine grades of the common schools in Illinois. This certificate is not specific for teaching a particular subject matter area but is general

and applies exclusively to grades K-9. If a school district is organized on a departmentalized basis in, for example, grades 7 and above, a special certificate in an identified subject area may be required by a local board of education as proper certification. 3/

To qualify for this certificate after July 1, 1981, a candidate must have graduated from a recognized institution of higher education with a bachelor's degree, earning at least 120 semester hours, of which at least 16 semester hours must be in professional education. Within the area of professional education requirements, a minimum of two semester hours is required in educational psychology (including human growth and development), two in methods and techniques of teaching at the elementary level, two in history and/or philosophy of education, and two in methods of teaching reading.

High School Certificate.--The standard high school certificate for grades 6-12 requires a minimum of 42 semester hours in general education plus at least 16 hours of professional education. Within the latter, at least two semester hours are required in the areas of educational psychology (including human growth and development), two in methods and techniques of teaching at the secondary level, and two in history and/or philosophy of education. An area of specialization is also required.

Special Certificate.--This certificate may be issued for teaching the special subjects listed on the certificate in all grades of Illinois public schools. For secondary teachers, the minimum requirements are set forth in State Board of Education Document Number 1, The Illinois Program for Evaluation, Supervision, and Recognition of Schools (October 1, 1977), as specified for all major subject areas. The typical requirement includes not only a minimum number of hours in the subject field but also a specific distribution of the required hours according to the commonly recognized subdivisions of the subject area. For example, the standard special certificate in the subject area of biological science requires a specific distribution of hours, including in many cases a requirement in laboratory work, in the subdivisions of biology, botany, physiology, and zoology. Other areas, such as foreign language, are stated in terms of a minimum number of required hours without further specificity. The recognition of competency by non-academic agencies is also provided in some cases, such as the requirements for teaching an aviation science course, which include the recognition of

3. Lenard v. Board of Education of Fairfield School District No. 112, 57 Ill. App.3d 853, 373 N.E.2d 477 (1978).

licenses or certificates issued by the Federal Aviation Administration.

Teachers in junior high schools and departmentalized upper elementary grades are required to have earned at least 18 semester hours in the area of major teaching assignment, including at least 5 semester hours in each course where subject matter areas are divided into two or more specific courses. As an exception to this requirement, the certification requirements provide that, when the departmentalization system is not entirely used in a junior high school, the above requirement applies only to departmentalized teachers.

The teacher with a standard special certificate may also receive a supervisory endorsement in a special area when the holder files evidence of possessing (1) a master's degree or higher from a recognized institution of higher learning; (2) eight semester hours of graduate professional education which shall include at least one course that relates primarily and explicitly to the supervision of personnel, and one course that relates primarily and explicitly to the administration and organization of schools; and (3) at least two years of appropriate teaching experience.

This certificate is also issued to qualified persons in specific areas of special education. Currently, the specific areas are educable mentally handicapped, learning disabilities, social/emotional disorders, trainable mentally handicapped, blind and partially seeing, deaf and hard of hearing, physically handicapped, speech and language impaired, and early childhood special education. Also in the area of special education, in addition to the teacher approval areas listed above, certificates for special education personnel are available for the positions of prevocational coordinator, teacher coordinator, administrator of special education, and supervisor of special education, as well as in early childhood education. The State Board of Education document Special Education Certification and Approval Requirements and Procedures contains the specific academic, professional, and experiential requirements for each of these certifications.

Substitute Certificate.--Substitute teachers in Illinois are required to hold an appropriate and valid certificate. A substitute teacher's certificate may be issued for teaching in all grades of the public schools. This certificate may be issued upon request by the regional superintendent of schools of any region in which the teacher is to teach and is valid for teaching in the public schools of any county. A restriction on a holder of a substitute teacher's certificate specifies that the holder may teach only in the place of a certified employee who is under contract with the employing board and only when no appropriate fully certified teacher is available to teach in a substitute capacity. In

addition, a substitute teacher may teach only for a period not to exceed 90 school days or 450 paid school hours in any one school district in any one school term. (A substitute teacher's school day is considered to be five hours.) A substitute certificate may be issued to any person who holds a certificate valid for teaching in the public schools as shown on the face of the certificate, holds a bachelor of arts degree from an institution of higher learning accredited by the North Central Association or another comparable regional accrediting association, has graduated from a recognized institution of higher learning with a bachelor's degree, or has had two years of teaching experience and has met any requirement established by the State Board of Education, in consultation with the State Teacher Certification Board (Public Act 82-585, 1981).

Provisional Certificate.--Since July 1, 1972, a provisional certificate may be issued for teaching in the elementary or high school grades or for teaching in special subject fields, provided the individual meets the requirements for a regular teaching certificate in another state and presents evidence of such, provided he or she presents certified evidence of having earned a bachelor's degree from a recognized institution of higher learning, or provided the academic and provisional courses offered as a basis of this certificate are courses approved by the State Board of Education, in consultation with the State Teacher Certification Board. A certificate issued under this plan is valid for two years and shall not be renewed. The State Teacher Certification Board is authorized by statute to issue two types of certificates in the area of vocational education: a provisional vocational certificate and a temporary provisional vocational certificate.

Provisional Vocational Certificate.--The minimum requirements for the provisional vocational certificate, as determined by the State Board of Education, in consultation with the State Teacher Certification Board, are evidence of 60 semester hours of credit from a recognized institution of higher learning plus documented evidence of 2,000 hours of work experience in the specific skill area to be taught.

Temporary Provisional Vocational Certificate.--This certificate requires documented evidence of 8,000 hours of work experience in the specific skill area to be taught. To meet the requirements for annual renewal of this certificate, an individual must file a transcript with the State Teacher Certification Board showing at least three semester hours of college credit earned during the previous year in a recognized institution of learning. This certificate shall not be issued except upon certification of the employing board of education, subject to the approval of the regional superintendent of schools, that no qualified teacher holding a regular certificate, or a provisional vocational certificate, is

available and that actual circumstances and need require such issuance.

General Certificate.--The State Teacher Certification Board may issue a general certificate for part-time teachers of adult education subjects. Such certificates shall be for teaching in the subject(s) named on the certificate. The local board of education certifies the training and experience that qualifies the applicant for teaching in the subject field. Any teacher who holds any other valid certificate for teaching in Illinois public schools may teach non-credit courses assigned by the local district superintendent of schools upon the authority of the employing board of education.

School Service Personnel Certificate.--Certification for school service personnel is available with endorsements for qualified applicants in the areas of school social worker, school psychologist, guidance and school nurse. While specific academic and experiential requirements for each area are specified in the State Board of Education document Minimum Requirements for State Certificates (August 1, 1980), state law specifies this certificate may not be issued unless the applicant is of good character, is a citizen of the United States, is at least 19 years of age, and has earned a bachelor's degree with not fewer than 120 semester hours from a recognized institution of higher learning. This certificate permits an added endorsement for supervision when the individual presents evidence of having earned a master's degree or higher from a recognized institution of higher learning; having completed eight semester hours of professional education, including at least one course primarily and explicitly relating to the supervision of personnel and one course primarily and explicitly relating to the administration and organization of schools, and having had at least two years of appropriate school service personnel experience.

The holder of a school service personnel certificate is entitled to all of the rights and privileges granted to holders of a valid teaching certificate in Illinois. These rights and privileges have not, however, been interpreted to include the right of school nurses to automatic placement on the teachers' salary schedule, which does not include individuals who are not teaching. While school nurses may be included in a district's teacher salary schedule by contractual agreement or by board policy, the mere possession of the school service personnel certificate by a school nurse does not entitle the individual to automatic placement on this schedule. 4/

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4. Kaveney v. Board of Education, Community High School District 128, 68 Ill. App.3d 216, 385 N.E.2d 1115 (1979).

Transitional Bilingual Certificate.--This special teaching area certificate is valid for a period of six years for teaching in the language(s) listed on the endorsement. While it allows the holder to teach in any approved bilingual education program in grades K-12, it can only be renewed beyond the six-year period of validity for a period of two years to permit the holder to acquire a teaching certificate under the provisions of Article 21 of the School Code (Public Act 82-597, 1981). Along with the general requirements for this certificate, a candidate must meet specific language requirements. The applicant is required to demonstrate adequate speaking and reading ability in a non-English language, as well as demonstrate adequate communicative skills in English.

Administrative Certificates.--Four endorsements are available in Illinois to qualify for public school administrative positions. These endorsements are general supervisory, general administrative, chief school business official, and superintendent. Each administrative certificate is valid for four years for teaching, supervising, and administering in the public schools and may be issued to persons who have graduated from a recognized institution of higher learning with a master's degree and who have been approved and certified by these institutions as having completed a program of preparation for one or more of these endorsements. Each endorsement requires at least two years of full-time teaching experience, with the exception of the chief school business official, which requires two years of administrative experience in school business management. Academic requirements for these four endorsements include coursework which is classified in the following specific areas:

Area 1: Courses in organization, operation, and administration of schools (administration, supervision, curriculum, finance, law, etc.).

Area 2: Courses in special areas of administrative concern (instructional materials, guidance, special education, research, tests and measurements, transportation etc.).

Area 3: Basic foundation courses in education (history, philosophy, psychology, sociology, etc.).

Area 4: Courses in cognate disciplines which relate directly to administrative competence (political science, sociology, communica-

tion skills, economics, anthropology, history, philosophy, etc.).

The general administrative endorsement, required for supervisors, curriculum directors and persons with similar or related positions, includes 8 semester hours in curriculum and research, 8 additional semester hours in Areas 1 and 2, and a balance of 14 semesters hours in Areas 1, 2, 3, and/or 4. General administrative requirements, for principals, assistant principals, assistant or associate superintendents, and persons with similar or related positions, requires 9 semester hours in Area 1, 6 semester hours in Area 2, 5 semester hours in Areas 1, 2, and 3, and a balance of 10 semester hours in Areas 1, 2, 3, and/or 4. Chief school business official endorsements require a minimum of 20 semester hours distributed into 8 semester hours in Area 1, 3 semester hours in Area 2, 9 additional semester hours in school business management or business, emphasizing work in financial affairs, planning, budgeting, and purchasing. Requirements for the superintendent endorsement include a minimum of 30 semester hours of graduate credit beyond the master's degree, including 16 semester hours of graduate credit in professional education coursework. The superintendent endorsement also stipulates 15 semester hours in Area 1, 12 in Area 2, 9 in Area 3, 6 in Area 4, with the balance of 18 hours in Areas 1, 2, 3, and/or 4. To earn this endorsement, an individual must have taken coursework in both elementary and secondary education, with credit in curriculum at both levels; have completed two years of creditable supervisory or administrative experience; and have earned the general supervisory or general administrative certificate, or a comparable certificate from another state.

Other Certificates.--In the past, some 26 other types of certificates not described above have been issued, and many are still valid. These include seven types of life certificates: life elementary, life kindergarten-primary, life special, life high school, life junior college, life general supervisory, and life school librarian. Thus, in the renewal and registration of certificates, one finds more types of certificates than are described here, but those currently being issued are the only ones that have been described. Regional superintendents must work with approximately 35 types of teaching certificates which have been issued and which teachers have continued to keep current.

The School Code provides that experienced teachers in Illinois public schools may seek additional teaching certificates. Each teacher attempting to qualify for an additional certification must meet the established qualifications for the certificate applied for and submit an application for evaluation of credentials to the State Teacher Certification Board.

Authority of the State Teacher Certification Board

Establishment.--The State Teacher Certification Board is statutorily created by Section 21-13 of The School Code of Illinois and provides that members shall be appointed by the State Board of Education. This board is created for the expressed purpose of carrying out the certification provisions contained in Article 21. Membership on the board is as previously described. As provided by law, each member serves a regular term of three years. This board is required to hold regular meetings at least quarterly and such other special meetings as are deemed necessary. All operational expenses are provided through the State Board of Education. It is important to recognize that the School Code specifically authorizes the State Board of Education, in consultation with the State Teacher Certification Board, to make and prescribe rules necessary for the administration of the provisions contained in Article 21.

The State Board of Education, in consultation with the State Teacher Certification Board, is empowered to issue administrative rules to supplement or clarify the requirements for certificates as identified in Article 21 of the School Code. These rules may be found in State Board of Education Document Number 1, The Illinois Program for Evaluation, Supervision, and Recognition of Schools, or in other State Board documents. Such documents typically provide additional requirements for grade levels, for subject areas, or for identified classifications of students, such as the nine areas of special certification in special education. The general authority of the state to establish such standards, and the mandatory status of such requirements, has been tested on at least two occasions in the Illinois Supreme Court. In both these cases, the court upheld such requirements, when determining if the teachers were legally qualified to claim the positions held by non-tenured or less senior tenured teachers during their boards' reduction in the number of teachers employed in their districts. In the opinions issued in both cases, the court concluded that the standards established in Article 21 of the School Code are general requirements for teacher certification, to be incorporated into the meaning of the term "legally qualified" as it appears in Section 24-12 of the School Code. These additional standards were viewed as mandatory requirements in departmentalized educational programs. 5/ (See Chapter VIII.)

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5. Lenard v. Board of Education of Fairfield School District No. 112, 74 Ill.2d 260, 384 N.E.2d 1381 (1979); Relph v. Board of Education of DePue Unit School District No. 103, 84 Ill.2d 436, 420 N.E.2d 147 (1981).

Regulations Relating to Certification

Registration and Renewal of Certificates.--Each application for a certificate or for evaluation of credentials must be accompanied by a non-refundable fee of $20. For graduates of recognized Illinois institutions of higher learning, the evaluation of credentials is commonly based on an official transcript of credits earned. No transcript of credits will be accepted by a regional superintendent of schools, the State Teacher Certification Board, or the State Board of Education unless it bears the seal and the signature of the responsible officer of the college or university issuing the transcript. When evaluation verifies that the applicant has met all the requirements for a valid certificate, the applicant is issued an entitlement card that is presented to the appropriate regional superintendent of schools (Sec. 21-12). Upon payment of a $5 registration and issuance fee, the applicant is then issued a certificate. All certificates must be registered annually, and a $4 fee is required for the renewal of a certificate. 6/ Following evaluation, applicants are notified of any deficiencies, if such exist (Sec. 21-16). A limited four-year certificate is renewable at its expiration. Lapsed certificates may be reinstated for a one-year period upon payment of all accumulated fees. Such renewal is made upon evidence that the teacher has completed any additional requirements imposed by statute or by the State Teacher Certification Board, including that of professional growth (Sec. 21-16). All certificates not renewed lapse after a period of four years following expiration. They may then be renewed only when the individuals show they possess valid certificates of another type or prove they have earned five semester hours of college credit (Sec. 21-14). A teacher may register as many certificates as he or she possesses.

Suspension or Revocation of Certificates.--Any certificate may be suspended for a period not to exceed one calendar year by either the regional superintendent or the State Superintendent "upon evidence of immorality, a condition of health detrimental to the welfare of pupils, incompetency, unprofessional conduct, the neglect of any professional duty, willful failure to report an instance of suspected child abuse or neglect, or other just cause" (Sec. 21-23). Unprofessional conduct includes refusal to attend institutes and teachers' meetings, or to do professional reading, or to meet other reasonable requirements of the regional superintendent or State Superintendent, as well as neglect in making reports required by school officers (Sec. 21-23). Due process is

6. Riley v. School District No. 124, 75 Ill. App.2d 35, 221 N.E.2d 424 (1966).

spelled out in Section 21-23 to protect the teacher. Certificates may be revoked for the same reasons by action of the State Teacher Certification Board, upon the recommendation of the regional superintendent, but only following a hearing before that board (Sec. 21-23). The State Superintendent of Education may revoke any certificate for the same reasons as those for suspension. However, no certificate shall be revoked until the teacher has an opportunity for a hearing before the State Teacher Certification Board. In addition, whenever the holder of any certificate has been convicted of any sex or narcotics offense, the regional superintendent or State Superintendent shall suspend the certificate. When the conviction becomes final, the State Superintendent of Education shall revoke that teacher's certificate.

Judicial Interpretation of Certification Legislation

Need for Certification.--An 1857 Act to Establish and Maintain a System of Free Schools in Illinois specifically addressed the topics of the examination, qualification, and duties of teachers. Under the act, school commissioners were authorized to "examine such person or persons proposing to teach a common school in the county, in relation to his or her qualifications to teach orthography, reading in English, penmanship, arithmetic, English grammar, modern geography and the History of the United States" (Sec. 50). If the school commissioners found the person to be of good character, and qualified to teach all the above branches of knowledge, a certificate of qualification, which would be valid for two years, was issued. School commissioners could, however, revoke this certificate for "gross immorality, incompetency, or other adequate cause." As is still essentially provided by statute today, the 1857 Act said: "no teacher shall be entitled to any portion of the common school or township fund, or other public fund, or be employed to teach any school under the control of any board of directors of any school district in this state, who shall not, before his employment, exhibit to said board, or to a committee of said board, a certificate of qualification obtained under the provisions of this act."

As indicated, all teachers must hold certificates, and these must be properly registered. For more than 100 years, higher courts in Illinois have consistently ruled that only

those certified may teach. 7/ One exception to this rule is a statute that permits schools to employ non-certified personnel as supervisors, chaperones, or sponsors for school activities not connected with the academic program of the school (Secs. 10-22.34a and b). Likewise, non-certified persons may, on either a compensated or a volunteer basis, be appointed to supervise school activities, and such persons with proper approval, may work as aides under the direct supervision of certified teachers.

Non-certified Personnel.--As indicated above, local school boards are permitted, under Section 10-22.34, to employ non-teaching personnel, or to use volunteer personnel, for non-teaching duties in Illinois public schools. The functions of such non-certified personnel are restricted to "non-teaching duties not requiring instructional judgment or evaluation of pupils." The functions legally permitted for non-certified employees and volunteers to "assist in the instruction of pupils" are required to be under the supervision of properly certified teachers. The supervising teachers are required to be continuously aware of the non-certified persons' activities and shall be able to control or modify them. The State Board of Education, in consultation with the State Teacher Certification Board, is responsible for determining the qualifications of such persons and is authorized by statute to prescribe the duties and activities to be assigned to such personnel. In determining the qualifications of non-certified personnel, the State Board of Education shall accept coursework earned in a recognized institution or from an institution of higher learning accredited by the North Central Association or another comparable regional accrediting association (Public Act 82-585, 1981). For example, any individual wishing to be approved as a teacher aide must file the required form with his or her regional superintendent of schools, along with an official transcript showing 30 semester hours of academic credit from an institution recognized for teacher education, or from a community college (Illinois State Board of Education, Minimum Requirements for State Certification, August 1, 1980). Some specific exceptions are allowed in the use of non-certified personnel. Schools are permitted to employ students holding bachelor's degrees from recognized institutions of higher learning as part-time teaching interns when they are enrolled in approved college or university internship programs. This exception also applies to students enrolled in the required student-teaching course.

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7. Smith v. Curry, 16 Ill. (6 Peck) 147 (1854); Casey v. Baldridge, 15 Ill. (5 Peck) 65 (1853); Neville v. School Directors, 36 Ill. 71 (1864); Wells v. People, 71 Ill. 532 (1874); School Directors v. Jennings, 10 Ill. App. 643 (1882); People v. Flanigan, 347 Ill. 328, 179 N.E. 832 (1932).

Non-certified personnel may be utilized, again under the direction of certified teachers, in providing specialized instruction related to courses assigned to certified teachers on a regular basis, those not otherwise readily available in the immediate school environment, in the fields for which these are particularly qualified by their specialized knowledge or skills. This exception also applies to the use of guest lecturers or resource persons in the classroom (Sec. 10-22.34b). School boards are specifically permitted to utilize non-certified personnel of good character to serve as supervisors, chaperones, or sponsors for school activities not connected with the academic programs of schools (Sec. 10-22.34a). A complete description of the acceptable utilization of non-certified personnel is presented in the State Board of Education publication Rules and Regulations for the Utilization of Teacher Aides and Other Noncertified Personnel.

Employment of Teachers Not Yet Certificated.--It is a common practice for a board of education to offer a contract to a person not yet eligible for certification, in the expectation that a certificate will be secured before the opening of school. Technically and legally, this procedure may be improper or illegal. In 1877, the Illinois Supreme Court ruled that a teacher had to prove the possession of a certificate at the time the contract for teaching was made. 8/ In 1893, an appellate court of the state ruled that a contract, made to teach before a teacher possessed a certificate was illegal, even though the certificate was secured prior to the opening of school. 9/ School boards are prohibited from paying any teacher "unless the teacher at the time of his employment [holds] a certificate of qualification..." (Sec. 10-20.15). However, an appellate court, in a case decided in 1893, held that no person could be employed as a teacher unless that person had a proper certificate at the time of entering into teaching duties. 10/ Probably the common practice of issuing contracts to new teachers before they have secured their certificates will and should continue. There is the further safeguard in the prohibition that teachers cannot be paid until their certificates are registered with the regional superintendent of schools (Sec. 21-1).

Additional Qualifications for Teachers.--May a local board of education require higher qualifications for its teachers than those required by state law for certification? The courts have ruled that it may. As a specific example, a township high school board of education adopted a salary

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8. Stevenson v. School Directors of District No. 1, 87 Ill. 225 (1877).
9. School Directors v. Newman, 47 Ill. App. 364 (1893).
10. Cramer v. Board of Education, 245 Ill. App. 172 (1924).

schedule based upon a program of professional growth for teachers. Salary increases were to be granted on the basis of teachers' taking additional college work or its equivalent in accredited workshops. This board policy was challenged in the courts by a tenured teacher in the district who held a master's degree and a life high school certificate on the grounds that a salary increase could not be denied him because his certificate was evidence of professional growth. In the final decision on this case, the board's policy was clearly upheld. 11/ It is a common practice for boards to have requirements for professional improvement, and the courts have upheld these in all jurisdictions unless the rules have been found to be unreasonable, arbitrary, or discriminatory.

Good Character as a Qualification for Certification.--In defense against a charge of not being of good character, a teacher may present as evidence his or her certificate, which was issued in part on the assumption that the teacher was of good character. In one high court case in Illinois, on the question of the determination of good or bad character, the court made the following observation:

> Character, strictly speaking, is that which a person really is. Reputation is that which a person is thought to be, or is supposed to be, in the minds of others. A man of very good character might have a bad reputation, and a man of good reputation might have a very evil character. 12/

Not being of good character is a difficult charge to prove.

Definition of "Professional Growth."--"Professional growth," a requisite for renewal of teachers' standard certificates, is defined by statute as consisting of the following: (1) successful teaching experience, (2) attendance at professional meetings, (3) membership in professional organizations, (4) additional credits earned in recognized teacher-training institutions, (5) educational travel, (6) the reading of professional books and periodicals, (7) the filing of all reports required, and (8) "such other professional experience or combination of experiences as are presented by the teacher and are approved by the State Superintendent of Education in consultation with the State Teacher

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11. Richards v. Board of Education of Township High School District No. 201, 21 Ill.2d 104, 171 N.E.2d 37 (1961).
12. People ex rel. Aken v. Puffer, 290 Ill. App. 196, 8 N.E.2d 198 (1937).

Certification Board" (Sec. 21-16). The general terms "good character," "competence," and "professional growth," when used by boards or other professional groups, will be closely examined by the courts. These terms may be considered in given cases, based on particular facts, but they are seldom the basis for easy decision. In addition to professional growth considerations at the state level, local boards of education may also establish such requirements. Section 24-5 provides that school boards may require teachers in their employ to furnish from time to time evidence of continued professional growth. The authority of a board to enforce a professional growth requirement that all teachers who have less than a bachelor's degree must earn at least six additional hours of acceptable college credit every five years or face dismissal has been judicially tested and upheld in Illinois. 13/

Certification for Chicago Teachers

In Chicago, teachers are not required to meet certification requirements established by the state of Illinois. In the Chicago school system, certification is the function of a three-member board of examiners. This body consists of the general superintendent of schools and two other members, who are approved and appointed by the board of education, upon the recommendation of the general superintendent. Both oral and written examinations may be required. Certificates to teach are issued by the Chicago Board of Education (Sec. 34-83).

Reciprocity with Other States

Holders of certificates from other states or territories of the United States may, under certain conditions, be certified to teach in Illinois when those states' standards are similar or judged to be equivalent (Sec. 21-11.1). Individuals who have completed teacher education programs accredited by the National Council for Accreditation of Teacher Education (NCATE) in the area of certification which they seek in Illinois may be affected by this provision. However, such persons must also meet all statutory requirements for their specific certification.

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13. Last v. Board of Education of Community Unit School District No. 321, 37 Ill. App.2d 159, 185 N.E.2d 282 (1962).

CHAPTER VII

Teacher Contracts

"The legal relation of the state through its several boards of school trustees with the teachers employed by it is one of contract. It has the right to say on what terms it will hire or authorize the hiring of persons to teach in its schools."—*Trumper v. School District*, 55 Mont. 90, 173 P. 946 (1918).

Introduction

Teachers are employees rather than officers of the state and occupy a contractual rather than a statutory status. This does not mean, however, that statutes relating to the employment of teachers can be ignored or overlooked. All statutes that are apropos become a part of teachers' contracts, at least by implication.

In general, school boards in Illinois are authorized to enter into annual contracts with teachers, providing that in fixing salaries, they make no discrimination on account of sex (Sec. 10-20.7), color, race, nationality, religion, or religious affiliation (Sec. 24-4). This chapter will focus attention upon the teachers' status under general contract only. The contractual status of tenured teachers will be considered in the following chapter. The primary statutory authority for employing and contracting with teachers is found in Sections 10-20.7 and 10-21.1 of The School Code of Illinois. These sections provide that the school board of each school district shall employ the necessary number of qualified teachers for the schools of the district.

Procedure for Appointment of Teachers

Illinois statutory law and the decisions of the higher courts in this state are explicit in requiring that a specified legal procedure be followed by both boards of directors and boards of education in the appointment of teachers. State legislation has also placed restrictions or limitations on boards in the employment of teachers.

While the law specifies definite procedures in employment, strict formality in conducting board meetings at which teachers are employed has not been a requisite. In 1896, an Illinois Appellate Court ruled that a contract employing a teacher entered into at a board meeting held for that purpose was valid even though the meeting was informally conducted. 1/ Employment, however, must result from action taken at either a regular meeting or a special meeting. In an 1882 decision, an appellate court ruled that no official business shall be transacted by the school board except at a regular or special meeting and that the board has no power

1. Pollard v. School District No. 9, 65 Ill. App. 104 (1896).

to make a contract with a teacher except at such a meeting. 2/ An appellate court also held in 1910 that a teacher can be employed by the board only at a regular or a special meeting. 3/ When a board contracts with a teacher, it is a contract for the personal services of a specific individual. Since 1878, Illinois courts have held that, in the absence of any waiver on the part of the employing board, a teacher's contract is for his or her personal services and cannot be fulfilled even by procuring a competent substitute to perform the services specified by the contract. 4/ In 1957, the Illinois legislature enacted an "open-meeting" law, which provides that school boards, as well as many other types of public bodies, shall conduct all of their business, with certain exceptions, at meetings open to the public (Ch. 102, Sec. 42-2, as amended by Public Act 82-378, 1981). Specifically, it provides that meetings in which teachers are being considered for employment may be closed to the public, but that the final or actual employment shall be consummated at open meetings.

The Teacher's Contract

Significance of the Contract.--The authority of a school board to employ teachers carries with it the implied authority to contract with them. As was stated previously, all statutes relating to contracts and to employment become a part of each teacher's contract, at least by implication. 5/ Courts take the position that teachers and school boards, when contracting, are, or should be, aware of the existence of all statutory requirements affecting the contracts and that, regardless of whether or not they are mentioned in the contracts, they become a part of them. 6/ Likewise, all reasonable school board rules and regulations adopted under the authority of statute become a part of each contract. Not only is a teacher bound by all such rules that are in effect at the time the teacher enters into the contract, but he or she must also abide by all such rules subsequently enacted by the board. 7/

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2. School Directors v. Jennings, 10 Ill. App. (10 Bradw.) 643 (1882).
3. Armstrong v. Lee School Directors of District No. 128, 160 Ill. App. 430 (1910).
4. School Directors v. Hudson, 88 Ill. 563 (1878).
5. Tripp v. Martin, 210 Ga. 284, 79 S.E.2d 521 (1954).
6. Anderson v. Board of Education of School District No. 70, 10 Ill. App.2d 63, 134 N.E.2d 28 (1956).
7. Richards v. Board of Education of Township High School District No. 201, 21 Ill.2d 104, 171 N.E.2d 37 (1961); Heifner v. Board of Education of Morris Community High School District No. 101, 32 Ill. App.2d 83, 335 N.E.2d 600 (1975).

While the contract gives the teacher security in his or her position, it also gives the school board security, as it is equally binding on both parties--the teacher as well as the board. Because the contract is the source of each party's rights, it is important that it meet all legal criteria. In contracting, teachers should be aware that school boards have only limited authority. They have no inherent authority to contract, and the measure of their power in this respect is to be found in the laws of the state. It has been said that school districts or school boards have the most limited legal power. Therefore, for a contract to be legal, it must have statutory authorization, and it must be made in the manner prescribed or dictated by statute. An example of teacher contracts being voided by an Illinois court is the case of a board taking two separate votes, one to offer contracts and the other to raise salaries, but taking no yea or nay vote on either issue. Both votes were held to be void, since the procedure followed by the board was not in compliance with Section 10-7 requirements that on all questions involving the expenditure of funds, the yea and nay votes must be taken and entered into the record. 8/ In the absence of a statute to the contrary, however, the contract need not be in writing, although the generally accepted and approved practice is for such a contract to be written. Also, board members are prohibited from being in "conflict" by having financial interests in contracts. This "conflict of interest" restriction applies to teachers' contracts. Illinois courts have held, however, that there is not a conflict of interest due to a marital relationship, such as a board member's spouse being employed in the district as a teacher. 9/ It is also important to recognize that teacher employment contracts issued by local district boards of education are normally considered to be one-year contracts. One exception is significant. Boards may legally enter into employment contracts for a maximum of three years with superintendents (Sec. 10-23.8) and principals (Sec. 10-23.8a).

Nature of the Contract.--A teacher's contract, like any other contract, must conform to the following generally recognized characteristics of a legal contract: (1) legal subject matter; (2) competent parties; (3) meeting of the minds; (4) definite terms; and (5) legal consideration. Under a provision of Chapter 122 of the Illinois Revised Statutes, "School boards shall appoint all teachers and fix the amount of their salaries subject to limitation set forth in this Act. They shall pay the wages of teachers monthly..." (Sec. 24-1).

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8. Lippincott v. Board of Education of Community Unit School District No. 5, 342 Ill. App.2d 642, 97 N.E.2d 566 (1951).

9. Hollister v. North, 50 Ill. App.3d 56, 365 N.E.2d 258 (1977).

Entering into the Contract.--In Illinois the board of education in every case must employ the teacher. Such authority cannot be delegated by the board to a superintendent of schools, to a member of the board, or to a committee of the board. The selection of a teacher is a matter of discretion that can be performed only by the board itself. In other words, the authority to employ teachers is vested in the entire board and not in any of the individual members of the board or in any administrative officer. 10/ It is clear that the authority to enter into a contract with an individual teacher is vested solely in the board of education. This discretionary power may not be delegated to any outside party such as an arbitrator. Even in the instance where a board and a teacher's bargaining organization have entered into a collective bargaining agreement (master contract), and a binding arbitration ruling has ordered an employment contract to be issued, the Illinois Supreme Court has ruled that the authority to issue teachers' contracts may not be delegated to any outside party, even an arbitrator. 11/ Any attempt to employ a teacher without following the manner prescribed by statute is illegal. 12/ The courts are fond of saying that "The mode is the measure of the power"--i.e., the authority to act is dependent upon the board's following the proper method.

Teachers in all districts, when originally appointed, are without tenure. It is only after a teacher has been employed as a full-time teacher in the same district for a probationary period of two consecutive years, generally, that the teacher is eligible for tenure status. A teacher completing the first year of probation shall receive from the school board written notice at least 60 days before the end of the term as to whether or not re-employment will occur for the second year of probationary service, and the teacher shall be deemed to be re-employed if the board fails to give such notice (Sec. 24-11). A teacher completing the last year of probationary service shall receive such notice, together with the reasons for the board's action, at least 60 days before the end of the term or if such notice is not given, the teacher shall be considered as having received tenure (Sec. 24-11).

A Teacher's Rights Under the Contract.--A contract, as was stated earlier, is binding on both parties. Any contract must be definite in its terms, and one that is so vague as to have little if any meaning is unenforceable--i.e., it

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10. Davis v. School Directors, 92 Ill. 293 (1879).
11. Illinois Education Association v. Board of Education of Township High School District 218, 62 Ill.2d 127, 340 N.E.2d 7 (1975).
12. Jackson v. School Directors of District No. 85, 232 Ill. App. 102 (1924).

gives neither the teacher nor the board the protection the contract is designed to provide.

A school board having voted to enter into a contract with a teacher may rescind its action, provided it does so before the actual execution of the contract has been accomplished, at which time a teacher's rights become vested. A teacher under tenure may resign, if it is done prior to 60 days before the opening of the fall school term. A teacher who resigns or "jumps" a contract at any other time is liable to a suspension of certificate for a period not to exceed one year (Sec. 24-14). Of course, a board may approve a teacher's resignation at any time it is asked to do so. If a board does not accept a tenured teacher's request to resign a contract during the period in which the contract is in force, the board may be able to bring punitive actions against the resigning teacher at the local district level. While a one-year suspension of a teacher's certificate may be sought by the local board, the ultimate responsibility for actually suspending the certificate is vested with the regional superintendent or the State Superintendent of Education (Sec. 21-23). A recent Illinois appellate court opinion upheld a financial penalty levied by a local board against a tenured teacher who resigned his contract, without board approval, during the school term covered by the contract. A board policy provided for a 4 percent withholding from a resigning teacher's salary as "liquidated damages." The resigning teacher began the school year after this policy was adopted by the board. In holding that the teacher accepted this board policy as part of his teaching contract by accepting a paycheck reflecting the salary he was to receive under the terms of the contract, the court found that the local board could bring a breach of contract action against the teacher for the 4 percent liquidated damages as a valid exercise of board authority. Two basic reasons for supporting this penalty were identified.

First, by bringing onto its staff in mid-year a teacher unfamiliar with the school system, and thus perhaps a person less effective in his or her teaching than someone who had filled the position from the beginning of the school year, the board incurred a loss to which it would be difficult to assign a precise monetary amount. Second, the board might be expected to incur considerable expense in finding a suitable replacement for the resigning teacher. In the words of the court:

> We find that 4% of the plaintiff's salary is an eminently reasonable estimate, in advance, of the losses [the] defendant could be expected to suffer in the event of [the] plaintiff's breach. It is not so large that it appears on its face to be a penalty. Also, the percentage method of computing liquidated damages is particularly appropri-

ate in a teacher's contract. A higher salary denotes more experience and/or education. Thus, the higher a teacher's salary, the more difficult it would be to find a comparable replacement and the more disruptive his departure likely would be to the school system. 13/

A teacher under contract, having decided to resign and having presented a written resignation to the board secretary, may withdraw the resignation at any time before it has been acted upon by the proper authorities, according to the decisions handed down by most courts. The board may not rescind its contract and remove the teacher from a position, however, without preferring charges and providing a hearing, 14/ and then for certain enumerated causes only (Secs. 10-22.4 and 24-5). In this connection, the courts are in agreement that neither a board of directors nor a board of education may make a contract ineffective--thereby achieving the same results as though it removed or "fired" the teacher--by closing the school, abolishing the position, or refusing to permit the teacher to teach, previous to the expiration of the contract. The courts assume that contracts are entered into in accordance with the statutes governing them, and one in which the parties agree to waive a certain section or sections of the law will be declared illegal.

Frequently a teacher is employed for a 9-month term, but, by contract, agrees to be paid in 12- rather than 9-monthly installments. When such is the case and the teacher resigns during the year, before the expiration of the contract, it is generally agreed that the teacher is entitled to the difference between the amount he or she would have recieved had payment been made in 9 rather than 12 installments and the amount actually received. Regarding the teacher's right to collect under contract, it should be noted that a teacher may collect salary for the period during which school is closed by the board because of a contagious disease or the destruction or damage of the school building as the result of a fire or a storm, unless the contract reads otherwise. 15/

Annual Contracts and Tenured Teachers.--Prior to the enactment of the Illinois Teacher Tenure Law in 1941 (Sec. 24-

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13. Arduini v. Board of Education of Pontiac Township High School District No. 90, 93 Ill. App.3d 925, 418 N.E.2d 104 (1981).

14. The removal of tenured teachers--i.e., professional employees--is considered in the following chapter.

15. Corn v. Board of Education, 39 Ill. App. 446 (1891); Phelps v. School District No. 109, 302 Ill. 103, 134 N.E. 312 (1922).

12), all teachers were employed on the basis of an annual employment contract. Since 1941, however, teachers who have earned a tenured status, i.e., teachers in contractual continued service, are not required to sign annual contracts in order to be considered employed in a public school district. While many school boards issue an annual contract to tenured teachers to identify specifically factors such as salary, starting and completion dates for the district's school year, compensation for specific extracurricular assignments, and similar matters, the non-issuance of an annual contract to a tenured teacher does not imply that the teacher's continuity of employment in the district is jeopardized. A teacher's tenured status does not, however, modify any existing power of the board, except with respect to the required procedures for discharging the teacher for cause. (See Chapter VIII.) Tenure does not restrict board authority in areas such as transferring a teacher to a position which the teacher is qualified to fill (Sec. 24-11). A unique tenure status is recognized in the School Code for teachers employed in a joint (cooperative) special education program established under Sections 10-22.3 and 14-1.01 through 14-14.01. Such teachers, following the successful completion of probationary service, enter into contractual continued service in each of the participating districts (Sec. 24-11).

Illinois law also prohibits a board from removing a teacher's contractual continued service for temporary illness or incapacity, as defined by the regulations of the board; during a leave of absence mutually agreed upon by the teacher and the board; or during the teacher's absence while he or she is in the military service of the United States. Tenure status may not be altered when, by mutual agreement between the teacher and the board, the board grants the teacher a leave of absence to accept employment in a Department of Defense overseas dependents' school or when a teacher is elected to serve in the General Assembly and requests a leave of absence from the board (Secs. 24-13 and 24-13.1).

Two unique issues have recently been raised regarding individual contracts issued to tenured teachers: teachers' salaries and no-strike clauses. The first issue involved the signing of individual contracts as a precondition for receiving salary increments. Two cases illustrate the court rulings on this question. In an appellate court case, a school board adopted a salary schedule for the ensuing school year. On the first day of the term, contracts were distributed to tenured teachers for their signatures. Unlike contracts prepared in previous years, these contracts contained a dollar amount according to the salary schedule that had been adopted by the board. At the time they were distributed, the teachers were informed that refusal to sign would result in their being paid according to the terms of the previous year's contract. Having these facts, the court found that the nonsigning teachers were not subject to any additional

obligations by refusing to sign the contracts. The court held that the action of the board in paying the nonsigning tenured teachers less than the signing tenured teachers of like experience and education for performing similar duties simply because they did not execute the written contracts was arbitrary, capricious, and unreasonable. 16/ The Illinois Supreme Court, in a separate case, adopted the same reasoning. When the withholding of salary increases for three tenured teachers was based solely on their refusal to sign individual employment contracts, the court found they were entitled to the increases because they worked the same number of days, performed all duties required, and attended all necessary functions just as the tenured teachers who signed the contracts did. In addition, since the three nonsigners were not informed that their refusal to sign would result in a lesser salary until after working 11 days into the school term, the court found the board's action "... creating a salary distinction based on a condition that was imposed subsequent to the unconditional adoption of the new salary base to be arbitrary, capricious and unreasonable." 17/

The second issue, no-strike clauses in individual tenured teacher contracts, also involved salary increases. A disputed contract contained a clause establishing that a signing teacher would not participate in any work stoppage, sit-in, or strike. Signing teachers were advised that they would receive an increase according to the regular salary schedule attached to the contract and, while this salary amount might be increased, it would not be reduced below the schedule. Nonsigners were to be paid according to the previous year's schedule. In effect, this made signing the individual contract a provision for receiving a salary increase, although the continuing employment of tenured teachers would not be affected. The nonsigning teachers performed all required duties during the school year covered by the no-strike clause contracts and were paid according to the previous year's salary schedule. In bringing suit against the board for payment under the higher salary schedule, 23 nonsigning tenured teachers claimed that since teachers as public employees are prohibited from striking, the board received nothing in the contract it could not already expect and that the denial of the increased salary was arbitrary, unreasonable, discriminatory, and based on an improper classification between signers and nonsigners. The board argued

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16. Littrell v. Board of Education of Cave-In Rock Community Unit School District No. 2, 45 Ill. App.3d 690, 360 N.E.2d 102 (1977).

17. Bagley v. Board of Education of Seneca Community School District No. 170, 83 Ill. App.3d 247, 419 N.E.2d 1165 (1981).

that the no-strike clause justified the difference in salary paid to signers and nonsigners. In a divided decision, the Illinois Supreme Court upheld the board's action:

> ... we must first point out the obvious, the public policy against strikes by public employees has been frequently and blatantly ignored. Defendant posits, however, and it is not disputed by plaintiffs, that where this policy has been included within a contract, imposing a personal and individual responsibility on a teacher to avoid such conduct, participation of signing teachers in strikes has been conspicuously absent.
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> A school board is charged not only with providing for the continuum of educational services, but with the fiscal management incidental thereto. Frequently, compelled to offer deserved salary increases to their teachers, boards may be forced by that increase to commit the totality of their budgets, eliminating or minimizing any budgetary reserve. Boards must, as much as possible, contain educational expenses for taxpayers and avoid deficit spending. To this end, they must utilize every legitimate means to reduce the risk of subsequent, untoward expenses such as those that might accrue as the result of a strike. This court recognizes a contractual no-strike clause--the embodiment of public policy--as a reasonable and practical consideration extracted by a board to better enable it to perform its constitutionally mandated duties.
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> Plaintiffs concede, by their brief, that the classification is reasonable if [the] defendant can point to some provision in the contract which gave it additional consideration to justify paying signing teachers a salary higher than that of nonsigners. In that we have found a no-strike provision to be [a] consideration, it follows that the classification between signers and nonsigners is reasonable and justifies the salary differential.
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> By this recognition, we negate the plaintiff's and appellate court's statement that "paying [plaintiffs] less than other tenured teachers of like experience and education for performing like duties simply because they did not execute the written contracts presented to them was arbitrary and unreasonable." The salary differential applied not "simply because" plaintiffs did not sign a contract, but because, by refusing to sign, they

avoided a personal commitment to a consideration which was of practical benefit to the defendant. 18/

The court, however, in noting that the nonsigning teachers continued their employment under the terms of the prior year's salary schedule and that the prior schedule included a provision for longevity and educational salary increments, ruled the nonsigning tenured teachers were entitled to both of these increments.

Dismissal.--While a non-tenured or probationary teacher's rights are largely determined by contract, a board may dismiss such a teacher under contract for any reason mentioned in the statute (Sec. 10-22.4). "Incompetency, cruelty, negligence, immorality, or other sufficient cause" constitutes grounds for dismissal. Likewise, a board may dismiss a teacher whenever, in its opinion, the teacher is not qualified to teach or whenever it feels that the interests of the school require it. The same reasons for dismissal appear to be applicable to both tenured and non-tenured teachers. They will be considered in some detail in the following chapter. The difference between the dismissal of these two classes of teachers is in the method employed. The statute specifically spells out the method to be followed in dismissing a tenured teacher (Sec. 24-12). All that is required to dismiss a non-tenured teacher is that the due process of law must be followed (Sec. 24-11).

Failure to Re-employ the Probationary Teacher.--Closely allied to the problem of dismissing teachers is that of failing to re-employ them. Re-employment of non-tenured teachers is not subject to the same degree of statutory control as is re-employment of tenured teachers. The probationary period is viewed as a "proving" period. As viewed by one court, the two-year probationary period in Illinois requires the employee to prove himself or herself and permits the employing school district an adequate period to evaluate the teacher's performance before being committed to a relationship of contractual continued service. 19/ As will be shown in the next chapter, a teacher who has once attained tenure can only be denied re-employment for cause as specified in the statute and then only after a statement of charges and a hearing conducted in the statutorily prescribed manner. Sec. 24-11 provides that, in most cases, after a teacher "has been em-

18. Bond v. Board of Education of Mascoutah Community Unit School District No. 19, 81 Ill.2d 242, 208 N.E.2d 714 (1980).

19. Seim v. Board of Education of Community Unit School District No. 87, 21 Ill. App.3d 386, 315 N.E.2d 282 (1974).

ployed in any district as a full-time teacher for a probationary period of two consecutive school terms" that he or she attains continued-service status unless given written notice of failure to achieve re-employment, together with the reason or reasons therefor, at least 60 days before the end of the year. An exception to the typical two-year probationary-service period is provided in Section 24-11 of the School Code. A board may, under the procedures specified, extend the probationary period for certain teachers, on an individual-by-individual basis, for one additional year. 20/

While this seems clear, it leaves several questions unanswered. In the first place, is a probationary teacher who fails at re-employment and who receives the notice and reasons therefor as required by statute entitled to a hearing? A Pekin, Illinois, teacher, who had been employed the requisite period of time to attain permanent, or tenure, status and who received proper and timely notice of her failure to achieve re-employment brought an action against the board in the federal district court, in which the issue appeared to be whether or not the board was required to give her a hearing. 21/ Without specifically so stating, the court took the position that a hearing was not required. It said: "This court holds that a complaint by a former probationary school teacher, stating only that she was dismissed upon proper notice and in conformity with state law, fails to state a cause of action for which relief may be granted...." It should be noted that, on appeal, the Court of Appeals of the Seventh Circuit reversed this decision. It took the position that the teacher was entitled to a hearing as well as a statement of reasons. 22/ In arriving at its decision, it relied heavily on the Roth decision, which was overruled by the Supreme Court in June, 1972. As a result, it would seem that the lower court decision that a hearing was not necessary represents the law at this time.

Another question that arises relates to the reasons which a board must give a teacher whom it fails to re-employ. Must the reasons be limited to those mentioned in the statute regarding dismissal (Sec. 10-22.4)? In a case originating in Illinois, an individual employed as a counselor failed in attaining continued contractual service, or tenure, because "of his lack of self-direction ... and cooperation in relation to extracurricular duties." Although this is not one of the reasons for dismissal enumerated in the statute, the court upheld the board's action. 23/ Judge Kiley, in a con-

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20. Graham v. Board of Education of School District No. 77, 15 Ill. App.3d 1092, 305 N.E.2d 310 (1973).
21. Shirck v. Thomas, 315 F.Supp. 1124 (1970).
22. Shirck v. Thomas, 447 F.2d 1025 (1971).
23. Simcox v. Board of Education, 443 F.2d 40 (1970).

curring opinion, made comments that are particularly apropos to the question under consideration. He said:

> ... it is my view that during a probationary period a school board is not limited in its determination that a counselor has proven his worth--before achieving tenure--to the school system by a showing of mere competence as a counselor. Beyond competence and contractual duties there is a grey area in which the board should have discretion to determine that a technically competent teacher or counselor may nevertheless not be suitable for the school system.

Finally, is a probationary teacher whose contract is not renewed entitled to a statement of reasons and a hearing by the board? This issue has been decided in conflicting decisions in several of the 12 circuits of the United States courts of appeals, with the apparent majority giving an affirmative answer; but a judgment of the Seventh Circuit (covering Illinois, Indiana, and Wisconsin) to that effect was reversed by the United States Supreme Court in 1972. 24/ The majority opinion (the vote was 5 to 3) given by Mr. Justice Potter Stewart was that in this particular case there was no deprivation of liberty or property as protected in the Fourteenth Amendment because the teacher simply lost his job in one university and was free to find another job in another university, which he did. It was emphasized that neither the state statutes nor the rules of the university's governing board nor the teacher's contract contained any shadow of entitlement to renewal; and it was emphasized that the board had not made any charges or made public any reasons whatever that might be derogatory to the teacher's reputation or that might make it difficult for him to obtain employment elsewhere. Otherwise, said Justice Stewart, the case might have been different.

It must be noted that Justices Douglas, Brennan, and Marshall dissented from the majority and wrote cogent opinions arguing against it and on behalf of openness and integrity in dealings between boards and teachers. Justice Stewart also stressed that although the teacher had originally alleged in a U.S. district court that the real reason for his nonrenewal was retaliation against him for having criticized some policies of the administration, in the exercise of his First Amendment right of freedom of speech, this part of his plea had been stayed in the district court, and therefore was not before the U.S. Supreme Court.

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24. Roth v. Board of Regents of State Universities, 408 U.S. 564 (1972).

In fact, he clearly indicated that a First Amendment plea in a case of this kind is entitled to a trial on the facts in federal court; and in a companion case adjudicated on the same day, the Supreme Court, noting that there was disputed testimony regarding the facts supporting the free speech plea, remanded it to the U.S. district court in Texas for trial of the facts. 25/ This case was settled out of court in late 1972, with a very substantial payment in damages to the aggrieved teacher.

The factors just recounted make it plain that the impact of the decision in the Roth case could easily be overestimated and that the decision did not and was not intended to foreclose all questions related to a non-renewed teacher's claim to a statement of reasons and a hearing. At the same time, it was a step forward in the progression toward protection of teachers from dismissal in retaliation for exercise of First Amendment freedom of speech.

Salary Under Contract.--While the contract is the source of the amount of a teacher's salary, this is true only if the contract is in conformity with the statutes. In Illinois, the statute provides that a school board must pay its teachers a minimum salary. This varies for different teachers, depending upon their educational qualifications and length of service (Sec. 24-8). While a board is required to pay the minimum amount prescribed by law, there is nothing to prevent it from contracting for an amount in excess of the minimum salary nor from granting more and larger salary increments than those prescribed by statute. This contracting above the minimum salary has been recognized in several instances, including the authority of a local board to establish a salary schedule based on professional growth and to provide salary increases based on achieving additional college education, or its equivalent, rather than on the sole basis of years of experience. 26/

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25. Sinderman v. Board of Regents of State Senior Colleges, 408 U.S. 593 (1972).

26. Richards v. Board of Education of Township High School District No. 201, 21 Ill.2d 104, 171 N.E.2d 37 (1961); Winters v. Board of Education of Piasa Community Unit School District No. 9, 66 Ill. App.3d 916, 384 N.E.2d 519 (1978).

CHAPTER VIII

Teacher Tenure

"It [the teacher tenure law] was enacted for the *benefit and advantage of the school system* by providing such machinery as would tend to minimize the part that malice, political or partisan trends, or caprice *might* play. It establishes merit as the essential basis for the *right* of permanent employment."—*People ex rel. Ruff* v. *School Directors of District No. 106*, 335 Ill. App. 445, 82 N.E.2d 203 (1948).

The Nature of Teacher Tenure

Introduction.--While the term "tenure" is used throughout this chapter, it is well to note that, technically speaking, Illinois does not have a "tenure" law. Instead it has a "contractual continued-service" law that applies to teachers. Such a law is generally considered to be a type of tenure law, and so the two terms "tenure" and "contractual continued service" are often used synonymously.

"Tenure" Defined.--Teacher tenure in Illinois, and in the other states as well, is a system or program which provides, by legal means, a measure of employment security and protection from unjustified dismissal. In Illinois, the teacher-tenure program is provided for and mandated by the statutes and is spelled out therein in detail. There are two types of tenure laws in Illinois, which are based on the size of the district. In each case, however, the tenure law guarantees to qualified teachers the right of continued employment in the public schools but, at the same time, provides for the removal of those who are considered to be unfit for service for specific reasons and for reduction in the teaching staff employed by a local board.

Purpose of Tenure.--The general purpose of tenure is to improve the effectiveness of teachers and the quality of education. It is believed that tenure will improve effectiveness by reducing turnover and increasing continuity of service; by instilling in teachers a sense of security, stability, confidence, and freedom; and by encouraging able people to prepare for teaching as a life profession. Other purposes are to provide fair and orderly procedures by which unsatisfactory teachers may be dismissed and to protect teachers from the selfish interests of social, economic, and political groups. It was largely due to abuses of an economic and political nature, by boards of education in the employment and dismissal of teachers, that tenure laws came into being. Although all abuses of this nature have not been eliminated, it is generally recognized that the situation has improved greatly since tenure became law in Illinois in 1941.

Legal Nature of Tenure.--Tenure status granted by the state to a teacher is not in the nature of a contract, in the opinion of the courts. If it created a contractual relationship, no change could be made in an existing law so as to affect those who are already under tenure or those who have achieved tenure status, since to do so would be unconstitutional on the grounds that it would have the effect of impairing the obligations of contract. This means, then, that future sessions of the legislature can modify a tenure law at will, even to the extent of repealing it. In the case of modification or repeal, it is generally held that

those under tenure cannot complain. In two cases in which the opposite was held, the decisions appear to have been based on the wording of statutes. (See Chapter V.) In other words, teachers have no inherent tenure rights but are subject to the will of their state legislature.

The legal defense of legislative action in creating a tenure program rests upon the grounds that it is one means of securing to the citizens of the state "an efficient system of high quality public educational institutions and services" (Ill. Const., Act. X, Sec. 1).

Statutory Provisions for Tenure

Introduction.--Tenure status for most teachers in the state is based upon an act of the General Assembly first passed in 1941 and since amended several times. In Illinois, a teacher attains tenure in a school district and does not achieve tenure in the state as a whole, as is the case in Pennsylvania, for example. Furthermore, acceptance of a contract in another district within the state of Illinois means that the teacher again becomes a probationary teacher. Statewide tenure would provide a greater measure of security and perhaps encourage the movement of teachers from one district to another.

Teacher tenure in Illinois will be considered in respect to: (1) tenure for teachers in the city of Chicago and (2) tenure for teachers in districts outside Chicago.

Tenure for Chicago Teachers.--Since 1909, Chicago teachers, under statute, have been appointed and promoted on a merit basis. During a probationary period of three years, the board of education may dismiss a probationary teacher upon the written recommendation of the general superintendent of schools. This recommendation is presumably based upon an evaluation of the teaching competency of the probationary teacher and must be accompanied by written reasons for the discharge. Following the completion of a probationary period, teachers achieve tenure status, subject to the following qualifications (Sec. 34-84): (1) tenure ceases after a teacher reaches the compulsory retirement age of 70; (2) tenured teachers must obey the rules of the board in respect to conduct and efficiency; and (3) the board may remove tenured teachers for causes outlined in Sections 34.84b and 34-85 of The School Code of Illinois.

The procedure in the dismissal of tenured teachers and principals is outlined in Section 34.85. The primary elements of this law are as follows:

No teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34-84) be removed except for cause.

The board by a vote of a majority of its full membership must first approve a motion containing written charges and specifications presented by the general superintendent of schools. Such motion shall contain a request to the State Board of Education to schedule a hearing on these charges before an impartial hearing officer and to appoint such hearing officer. A written copy of the motion shall be served upon the teacher or principal not more than 10 days after the date of the adoption of the motion.... The teacher or principal may waive the hearing at any time prior to the appointment of the hearing officer. Notice of the selection of the hearing officer shall be given to the State Board of Education.... The State Board of Education shall notify the teacher or principal and the board of its appointment of the hearing officer who shall schedule the hearing not less than 20 nor more than 45 days after the date of such notification.... The hearing officer shall hold a hearing and render the final decision. The hearing shall be public at the request of either the teacher or principal or the board. The teacher or principal has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present defenses to the charges. The hearing officer may issue subpoenas requiring the attendance of witnesses and, at the request of the teacher or principal against whom a charge is made or the board, shall issue such subpoenas, but the hearing officer may limit the number of witnesses to be subpoenaed in behalf of the teacher or principal or the board to not more than 10 each. All testimony at the hearing shall be taken under oath administered by the hearing officer. The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all the testimony.... Either party desiring a transcript of the hearing shall pay for the cost thereof.

Pending the hearing of the charges, the person charged may be suspended in accordance with rules prescribed by the board but such person, if acquitted, shall not suffer any loss of salary by reason of the suspension.

> Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher or principal shall be given reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges.
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> The hearing officer shall within 45 days from the conclusion of the hearing make a decision as to whether or not the teacher or principal shall be dismissed and shall give a copy of the decision to both the teacher or principal and the board.... The decision of the hearing officer is final unless reviewed....
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> In the event judicial review is instituted, any costs of preparing and filing the record of proceedings shall be paid by the party instituting the review. If a decision of the hearing officer is adjudicated upon review or appeal in favor of the teacher or principal, then the trial court shall order reinstatement and shall determine the amount for which the board is liable including but not limited to loss of income and costs incurred therein.

It is difficult to tell from a reading of the Chicago teacher-tenure statute what may be considered sufficient cause for removal of a tenured teacher. In one case that reached a higher court, the action of a Chicago tenured teacher who had written to a former student congratulating him upon his refusal to register under the Selective Service Act was held to be sufficient cause for removal. 1/ As early as 1928, an Illinois court determined that the board of education in Chicago could pass reasonable rules governing the efficiency of teachers and principals as well as their personal conduct without affecting teachers' rights under tenure. 2/ As will be demonstrated later, however, a school board may not remove a teacher for cause if in so doing, it violates the rights of the teacher guaranteed by the U.S. Constitution--i.e., it may not remove a teacher because of race, creed, or color. Likewise, it may not take any action that has the effect of denying the teacher the right of freedom of expression.

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1. Joyce v. Board of Education of City of Chicago, 325 Ill. App. 543, 60 N.E.2d 431 (1945).
2. Armstrong v. City of Chicago, 247 Ill. App. 524 (1928).

Teacher Tenure in Districts Having Populations Less Than 500,000--Specifically, the statute that gives teachers in districts other than Chicago tenure includes the following provisions:

1. For the purpose of the statute, the term "teacher" is used to refer to "any or all school district employees regularly required to be certified under laws relating to the certification of teachers..." (Sec. 24-11).

2. A teacher who has been employed in a district for two consecutive years shall enter contractual continued service unless the board notifies the teacher by registered mail of failure to achieve re-employment, together with the reasons therefor, at least 60 days before the end of the second year of service. The board may "dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause ... whenever, in its opinion he is not qualified to teach, or whenever ... the interests of the schools require it..." (Sec. 10-22.4).

   There is one major exception to this general rule. If a teacher has not had one complete term--or school year--of teaching experience previous to starting service in a school district, the board may elect to extend the probationary period for one additional year, instead of placing the teacher on continued-service status. To do this, however, it must give the teacher written notice of its action by registered mail at least 60 days before the completion of the second year of probationary service (Sec. 24-11). Such notice must include a statement of the reasons for the one-year extension, and it must outline corrective action to be taken by the teacher in order to complete the probationary service satisfactorily. In addition, if a teacher has not had one complete year of probationary service, which requires employment on a full-time basis before November 1 of the school term, prior to starting service in a school district, the board may elect to extend the probationary period for an additional year, instead of placing the teacher on contractual continued service at the end of the two-year probationary period. Illinois courts are clear in holding that this service must be full-time and that part-time employment is not creditable as service to be recognized as completing any portion of the probationary period. In the view of the Illinois Supreme Court:

> The fact that Section 24-11 provides for extension of the two-term probationary period in the case of a teacher who does not have a third term of full-time teaching experience ... emphasizes the fact that the tenure system has as its goal the continued service of "teachers of ability and experience." Full-time teaching in the probationary period not only allows the board to observe the teacher under the stress of a full work load, but also gives the teacher experience. Full-time teaching after the probationary period and in the early stages of a teaching career continues to assure the board that skills will be properly developed so that the teacher retained will become an experienced, seasoned teacher. 3/

3. After a teacher has attained contractual continued service, no annual contracts are required.

4. When a teacher attains contractual continued service, the provisions of the contract for the final year of probationary service shall continue in effect (Sec. 24-11). (Likewise, the provisions of the continuing contract law and all lawful rules and regulations enacted by the board become a part of the contract by implication.)

5. A teacher with continued-service status can be removed for the reasons stated previously governing the removal or dismissal of teachers (Secs. 10-22.4 and 24-12). In addition, such a teacher may be dismissed because of a decrease in the number of teachers employed by the board or a discontinuance of some type of teaching service. In such cases, the board must notify the teacher of dismissal by registered mail 60 days before the end of a school term. And this written notice must contain a statement of honorable dismissal, along with the reason(s) for this board action. A teacher so dismissed must be re-employed if the board again creates the position or positions or increases the number of teachers within one calendar year from the beginning of the following school term if the honorably dismissed teacher is legally qualified to hold the position (Sec. 24-12). In honorably dismissing teachers for either of these two reasons, the board must first remove or dismiss all teachers on probationary serv-

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3. Johnson v. Board of Education of Decatur School District No. 61, 85 Ill.2d 338, 423 N.E.2d 903 (1981).

ice before removing or dismissing any tenured teacher who is legally qualified to hold the position of a non-tenured teacher. When selecting from legally qualified tenured teachers in an honorable dismissal situation, the board must also first remove those with the least seniority in the district, unless an alternative method of determining the sequence of dismissal is established in a collective bargaining agreement or contract between the board and a professional faculty members' organization. An additional exception in this instance also requires that the sequence of dismissal shall not impair the operation of any affirmative action program in the district, regardless of whether it exists by operation of law or whether it is conducted on a voluntary basis by the board. The law also requires that, whenever the number of honorable dismissal notices based upon economic necessity exceeds five, or 150 percent of the average number of teachers honorably dismissed in the preceding three years, whichever is more, the board shall hold a public hearing on the question of the dismissals. Following this hearing and board review, the action to approve any such reduction requires a majority vote of the board members (Sec. 24-12). It is significant to note that, in the case of honorable dismissal of teachers requiring a hearing, the local board conducts the hearing. This is in sharp contrast to the required procedures for the dismissal of a tenured teacher for cause which mandates an external hearing officer, and not the local board, as the proper agent to conduct the hearing.

6. As indicated, teachers with contractual continued-service status may be removed for cause, but then only in the manner prescribed by statute (Secs. 10-22.4 and 24-12).

7. Dismissal for cause becomes effective only when a majority of all board members have voted to approve the dismissal motion and when the statutorily prescribed hearings have been held or when the teacher decides to dispense with them (Sec. 24-12).

8. A board that desires to dismiss or remove a teacher with tenure for any other reason or cause, including those indicated in no. 2 above, must approve a motion containing the specific charge or charges against the teacher that brought about this action (Sec. 24-12).

9. Unless the teacher, within 20 days, requests in writing to the board that no hearing on the dismissal be scheduled, the board must schedule a hearing

on the charges aginst the teacher before a disinterested hearing officer. This hearing is to be held on a date which is no less than 30, nor more than 60, days after the enactment of the board's motion to dismiss (Sec. 24-12).

10. The board must provide written notice of the charges and must serve such notice on the teacher at least 21 days before the hearing date. This notice must also contain a bill of particulars. The secretary of the school board must also forward a copy of the notice to the State Board of Education (Sec. 24-12).

11. Within 10 days after receiving the notice from the secretary of the school board, the State Board of Education must provide a list of five prospective hearing officers to preside over the dismissal hearing. Each person on this list must be accredited by a national arbitration association, and no one listed may be a resident of the school district involved in the dismissal action. The per diem allowance for the hearing office is paid by the State Board of Education (Sec. 24-12).

12. Within five days the local board and the teacher, or their legal representatives, must select a hearing officer from the list of five names. Beginning with the teacher, they alternately strike a name from the list until one name remains. This hearing officer then is responsible for conducting the dismissal hearing in accordance with the State Board of Education uniform standards and rules of procedure governing such hearings (Sec. 24-12).

13. The hearing officer, not the local district board of education, conducts the dismissal hearing and renders a final decision (Sec. 24-12).

14. The hearing shall be public if either the teacher or the board so requests (Sec. 24-12).

15. The teacher has the privilege of being present at the hearing with counsel, to cross-examine witnesses and may offer evidence and witnesses, and present a defense to the charges (Sec. 24-12).

16. In conducting the hearing, the hearing officer may issue subpoenas requiring the attendance of witnesses and, at the request of the teacher against whom a charge is made or the board, shall issue such subpoenas. The hearing officer may limit the number of witnesses to be subpoenaed in behalf of the teacher or the board to not more than 10 (Sec. 24-12).

17. Testimony shall be taken under oath and the hearing officer is authorized to administer oaths to witnesses (Sec. 24-12).

18. The hearing officer must cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all the testimony. The costs of the reporter's attendance and services at the hearing is paid by the State Board of Education. Either party desiring a transcript of the hearing must pay for the transcript's cost (Sec. 24-12).

19. If the cause of dismissal is such that, in the board's opinion, the interest of the school requires it, the board may suspend the teacher pending the hearing. Then, if the teacher is found not guilty of the charges, the teacher shall receive any salary lost as the result of the suspension (Sec. 24-12).

20. Before setting a hearing on charges stemming from causes that are considered remediable, a board must give the teacher reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges. The hearing officer shall, with reasonable dispatch, make a decision as to whether or not the teacher shall be dismissed and shall give a copy of the decision to both the teacher and the school board. The decision of the hearing officer is final unless reviewed as provided in Section 24-16. In the event such review is instituted, any costs of preparing and filing the record of proceedings shall be paid by the board (Sec. 24-12). The failure to correctly determine that the causes leading to the dismissal of a tenured teacher are remediable, or the failure to properly notify the teacher of remediable practices, has frequently resulted in a board's dismissal action being overturned and the teacher's being reinstated. 4/

21. Any teacher who is reinstated by any hearing or adjudication brought under Section 24-12 shall be assigned by the board to a position "substantially similar" to the one which that teacher held prior

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4. Grissom v. Board of Education of Buckley-Loda District No. 8, 75 Ill.2d 314, 388 N.E.2d 395 (1979); Paprocki v. Board of Education of McHenry Community High School District No. 156, 31 Ill. App.3d 112, 334 N.E.2d 841 (1975).

to the suspension or dismissal action. In addition, if a decision of the hearing officer is adjudicated upon review or appeal in favor of the teacher, then the trial court shall order reinstatement and shall determine the amount for which the board is liable, including but not limited to loss of income and costs incurred therein (Sec. 24-12).

22. At the end of the term following a teacher's seventieth birthday, contractual continued service terminates and subsequent employment of the teacher must be on an annual basis (Sec. 24-11).

23. If, as the result of a change in a district's boundaries, or the creation of a new district, a teacher with contractual continued-service status is located in a different district, the teacher retains that status. In such cases, the new employing board is required to accord the tenured teacher the same rights as if the teacher were its employee and had been its employee during the time the teacher was actually employed by the prior board (Sec. 24-12).

24. A teacher employed in a special education program or in a joint education program authorized by statute (as described in Secs. 10-22.31a and 14-1.01 to 14-1.10) shall continue on contractual continued-service status if the teacher previously enjoyed such status in one of the participating districts. And, if a teacher employed in a special education program operated by two or more districts attains contractual continued-service status after teaching two or more years in the program, the teacher has such status in each of the participating districts (Sec. 24-11). No provision has yet been made for contractual continued service for cooperatives operated by educational service regions (Sec. 3-15.4). Also, as indicated in Chapter VII, a teacher's tenure status is not affected by absences from employment in a district which are caused by temporary illness or temporary incapacity, as defined by the regulations of the employing board; by a leave of absence mutually agreed upon between the teacher and the board; by absence while in the military service of the United States; by absence while serving as an elected member of the Illinois General Assembly, provided the teacher requests such a leave of absence; and by a leave of absence mutually agreed upon between the teacher and the board so that the teacher can accept employment in a Department of Defense overseas dependents' school (Secs. 24-13 and 24-13.1).

Interpreting the Illinois Teacher Tenure Law.--Much is learned about the tenure law by studying interpretations of the law handed down by Illinois courts.

Of several tenure cases that reached the Illinois higher courts after the passage of the 1941 act, the one that definitely established the validity of the statute was decided in 1949. Here, a strong statement was made when the court said:

> Prior to 1941 boards of education possessed the unlimited discretionary right to refuse to rehire teachers at the end of any contract period. It is a matter of common knowledge that some boards of education would on occasions fail to rehire a qualified teacher for reasons that were political, partisan, capricious, or purely personal or malicious, which reasons had nothing to do whatsoever with the experience and ability of the teacher. Undoubtedly the objects here to be attained by the legislature in passing the Teacher Tenure Act were to improve the school systems by assuring to teachers of experience and ability a continuance of service and a rehiring based upon merit, but reserving in the board of education the right to have a two (or sometimes a three) year period to adjudge of any teacher's character and qualification before the contractual continued service status was acquired and the right to dismiss or refuse to rehire a teacher for good cause. 5/

An appellate court decision rendered one year earlier spoke of the purpose of the teacher tenure law, saying:

> It [the teacher tenure law] was enacted for the benefit and advantage of the school system by providing such machinery as would tend to minimize the part that malice, political or partisan trends, or caprice might play. It establishes merit as the essential basis for the right of permanent employment. On the other hand, it is equally clear that the act does not impair discretionary power of school authorities to make the best selections consonant with the public good.... 6/

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5. Betebenner v. Board of Education of West Salem Community High School District 201, 336 Ill. 448, 84 N.E.2d 569 (1949).

6. People ex rel. Ruff v. School Directors of District No. 106, 335 Ill. App. 445, 82 N.E.2d 203 (1948).

One technical question that still puzzles teachers is that of the custom (still prevalent) of issuing annual contracts to tenured teachers. However, as early as 1942, it was held by legal specialists that annual contracts for tenured teachers are not required. 7/ A more recent illustration of the same conclusion was contained in a 1980 decision of the Illinois Supreme Court. Addressing this specific question, the court stated:

> The law does not require a tenured teacher to sign a new contract, and those who decline the option of signing cannot be removed for their failure to do so. ...the terms of continued employment for a tenured teacher differ from those of the average employment contract. Under the latter, the employer offers a salary, the amount being totally discretionary, in exchange for a particular job performance, and if the employee is unwilling to accept the terms, employment may be terminated. A tenured teacher, however, has the option of declining the new contract and continuing employment, under the provisions of the School Code.... 8/

The Illinois teacher tenure law also gives statutory protection to tenured teachers who are serving in the military or in the General Assembly. There have been few instances of litigation respecting tenured teachers on military leave. However, there have been instances, or requests, for interpretations of the law as to whether it applied to those who volunteered for military service as well as to those who were drafted and as to how soon a board must permit a return to teaching duties following a teacher's release from military service. In the first instance, it has been held that the law applies equally to all those in military service, irrespective of how long they remained in service or how they entered service. In the second instance, courts have ruled that tenured teachers must be permitted to return to teaching immediately, or within a reasonable time. In the case of an honorably dismissed teacher, however, Section 24-12 recognizes a one-calendar-year right to claim a position in the district. Illinois courts have interpreted this one-calendar-year period for preferential rehiring rights to commence at the end of the last school term of employment

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7. Attorney General's Opinions, state of Illinois, 1942, p. 275.

8. Bond v. Board of Education of Mascoutah Community School District No. 19, 81 Ill.2d 242, 408 N.E.2d 714 (1980).

rather than one calendar year from the date the teacher received notification of the honorable dismissal. 9/

The intent of one section of the teacher tenure law is designed to discourage teachers from resigning shortly before the opening of school. The statute itself is of considerable importance to both teachers and boards of education. It reads as follows:

> No teacher who has entered upon contractual continued service may terminate such service during the part of the school year when school is in session nor for a period of 60 days just previous to the beginning of the school term except by agreement of the board and the teacher. No teacher entered upon contractual continued service shall be permitted to terminate it during any other part of the school year except by service upon the secretary of the board of written notice of the termination. Any teacher terminating said service not in accordance with this section is guilty of unprofessional conduct and liable to suspension of certificate, as provided under the law relating to the certification of teachers, for a period not to exceed 1 year (Sec. 24-14).

It is well to point out that this section, which threatens the suspension of certificates for a period of one year, is of state-wide application only and would not affect teachers who secured positions in other states after having resigned their previous positions in Illinois in July or August or during the school term.

As previously indicated, a teacher earns tenure in a district and not in a particular grade, position, or school within the district. As a result, the board may transfer teachers to any position they are qualified to fill. Likewise, it may make salary adjustments as it deems necessary, providing that unless reductions in salary are uniform or based upon some reasonable classification, "any teacher whose salary is reduced shall be entitled to a notice and a hearing as ... provided in the case of certain dismissals or removals" (Sec. 24-11). An Illinois appellate court, in 1949, threw some light on the question of reduction of a teacher's salary in the amount of $400, following a teacher's reassignment from coaching to straight teaching. In its

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9. Hartley v. Board of Education of Cerro Gordo Community Unit School District No. 100, 66 Ill. App.3d 1021, 384 N.E.2d 535 (1978).

ruling approving this reduction, the court reasoned that tenure did not extend to extracurricular duties and extra compensation for their performance. It said, in part: "Contractual continued service status of a teacher does not attach to extracurricular services when they are contracted for separately at specified amount...." 10/

Another question of which there is some certainty, since the court decisions appear to be relatively conclusive, relates to whether administrators--superintendents, principals, supervisors, etc.--obtain tenure of employment or tenure of position. The question came up for consideration in 1956 when the Supreme Court of Illinois ruled that administrators were "teachers" within the meaning of the tenure law, since they were required to be certificated. 11/ It did not rule that an administrator has tenure of position, but only that reassignment of duties that would involve a smaller salary requires that due notice and an opportunity for a hearing be granted. Illinois courts have commonly held that administrators do earn teacher tenure in public school districts, if they would otherwise qualify as serving certified teachers. This would include, of course, serving in a capacity requiring certification, completing the minimum probationary period, and being legally qualified to teach in Illinois public schools. 12/ An exception to this general statement involves the legal rights of superintendents and principals under multi-year contracts and is considered later in this chapter.

Extracurricular Duties and Tenure.--Although local boards are empowered to utilize non-certified personnel for some non-teaching extracurricular duties, nothing in Illinois statutory or case law prohibits a board from assigning tenured teachers to such activities (Secs. 10-22.34a and 10-22.34b). The School Code is silent on the question of compensation, if any, for tenured personnel assigned to perform extracurricular duties such as chaperoning or sponsoring school clubs or organizations. When teachers are performing such duties, the rights and privileges associated with the tenure status do not extend to extracurricular activities. Illinois courts have addressed this question and have routinely found that teachers do not earn or secure ten-

10. Betebenner v. Board of Education of West Salem Community High School District 201, 336 Ill. App.2d 448, 84 N.E.2d 569 (1949).

11. McNely v. Board of Education, 9 Ill.2d 143, 137 N.E. 2d 63 (1956).

12. Davis v. Board of Education of Farmer City-Mansfield School District No. 17, 63 Ill. App.3d 495, 380 N.E.2d 58 (1978).

ure in extracurricular position. 13/ As previously indicated, in at least one instance, a federal court has upheld the dismissal of a counselor-teacher for willfully failing to cooperate with a board of education in accepting and carrying out extracurricular duties properly assigned by the board. The teacher, who would have achieved tenure, was refused a contract for the third year of employment. Among the reasons stated by the board was the teacher's refusal to attend evening meetings with parents. All counselors within the district were expected to attend such meetings. In upholding the dismissal action against the teacher, a United States Court of Appeals held that this was an obligation on the part of the teacher, even though this duty to attend the evening parent meetings was not specifically included in his employment contract. 14/

While the authority of the board to assign teachers to teaching positions is generally recognized, a special case is established when a teacher is reinstated after any "hearing or adjudication brought under Section 24-12 of the School Code." In this case, the board is required to assign a teacher to a position which is substantially similar to the one which the teacher held prior to a suspension or dismissal action by the board. The term "substantially similar" was tested in an appellate court action involving three tenured physical education teachers-coaches who were suspended without pay from their high school teaching positions and extracurricular assignments, pending dismissal for allegedly immoral conduct. Following a hearing as required by the Illinois School Code, the hearing officer rendered a decision that the school board had failed to prove the three teachers guilty of the charges against them. By the hearing officer's order, they were to be "restored to the same positions as, or to positions substantially similar to, the ones held by them prior to their suspension" and "made whole for all monies and other employment benefits lost as a result of their suspension." A circuit court affirmed the hearing officer's decision on reinstatement and back pay but determined that their extracurricular coaching activities were not protected by the School Code and declined to order the school board to reassign them to their prior coaching positions or to direct reimbursement for their lost coaching salaries. The coaches appealed, contending the provisions of the School Code required that upon their being reinstated to their teaching positions, the school board also was required to assign them to their former coaching positions, or to substantially simi-

13. Betebenner v. Board of Education of West Salem Community High School District 201, 336 Ill. App.2d 448, 84 N.E. 2d 569 (1949).

14. Simcox v. Board of Education of Lockport Township High School District No. 205, 443 F.2d 40 (1971).

lar ones. 15/ Inasmuch as Section 24-12 does not specifically refer to coaches or other extracurricular assignments, the appellate court held that the three teachers were not tenured as coaches under the Code and that they were only tenured physical education "teachers," as that term is used in Section 24-12. In arriving at a decision, the court noted that, while athletic coaches might also be certified teachers of substantive school courses at the various instructional levels, athletic coaches are not required by law to be certified as coaches. As stated by the courts:

> Had the legislature intended to grant teachers the right to reassignment in their extracurricular positions, it could easily have chosen more specific language, not framed in singular terms of a position similar to the one which a teacher previously held. To hold otherwise would require an overly expansive reading of the statute (24-12) in question.

Tenured Teacher "Bumping" Rights.--When teachers are being honorably dismissed due to a reduction in the number of teachers employed in a school district, tenured teachers in Illinois hold the legal right to claim the positions of teachers with less seniority in the district. As previously described, Section 24-12 provides two exceptions to this right, with these exceptions centering on collective bargaining agreements, or master contracts, and affirmative action program considerations. In addition, Illinois courts have recognized two additional exceptions to the seniority privilege of "bumping" (claiming the position of another teacher). Various courts have held that tenured teachers, in order to claim the positions of less senior tenured teachers or non-tenured teachers, must be legally qualified and must meet any bona fide qualifications established by the board to hold the positions.

The concept of tenured teachers' being legally qualified to claim the positions of less senior teachers evolves from two School Code considerations: (1) the recognition of in-district seniority, as contained in Section 24-12 and (2) the state's interest in insuring that all public school teachers in Illinois are properly certified, as described in Article 21. The state's criteria for "legally qualified" are commonly identified in semester hour and subject area requirements for teacher certification and are found in State Board of Education Document Number 1. (See Chapter VI.) In a reduction-in-force (RIF) situation, therefore, local boards may

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15. School Directors of District U-46 v. Kosoff, 95 Ill. App.3d 26, 419 N.E.2d 658 (1981).

include the legally qualified consideration in determining the teacher or teachers to be honorably dismissed as superseding a selection procedure based on straight seniority. A growing body of case law is developing in this area in support of this conclusion.

With respect to the basic issue of bumping rights and legal qualifications, two decisions by the Illinois Supreme Court are significant. The court first upheld the principle that a teacher, to be considered legally qualified, must meet the certification requirements established in State Board of Education Document Number 1. This document was viewed as being a mandatory requirement to be set in order for a tenured teacher to be considered legally qualified, according to Section 24-12 of the Illinois School Code, to claim a position held by a non-tenured teacher in a departmentalized program. In the court's view:

> We conclude that the (SBE Document No. 1) standards for teachers, promulgated by the Superintendent pursuant to authority delegated by the School Code, are to be incorporated into the meaning of the phrase "legally qualified" as it appears in Section 24-12 of the Code. 16/

In 1981, this court again recognized that the definition of "legally qualified," as contained in Section 24-12, included meeting the requirements specified in State Board of Education Document Number 1. The case involved tenured teachers who were dismissed due to the economic conditions of their respective school districts. Section 24-12 requires that in such cases a board of education must first remove non-tenured teachers before removing tenured teachers who are legally qualified to hold the positions currently held by teachers who have not entered into contractual continued services. The court again in 1981 recognized the application of Document Number 1 in reduction-in-force and bumping situations involving tenured and non-tenured teachers in Illinois public schools. 17/

These two cases dealt with the legally qualified issue in the context of teachers with greater in-district seniority attempting to claim the full-time positions of less senior personnel. Other courts have expanded the seniority privi-

16. Lenard v. Board of Education of Fairfield School District No. 112, 74 Ill.2d 260, 384 N.E.2d 1381 (1979).
17. Relph v. Board of Education of DePue Unit School District No. 103; Hagopian v. Board of Tampico Community Unit School District No. 4, 84 Ill.2d 436, 420 N.E.2d 147 (1981).

lege to include bumping for part-time positions. In a controversy involving a full-time teacher whose position was eliminated due to a reduction of certified staff, and the claim that she had on the position being held by a part-time non-tenured teacher, the Illinois Court of Appeals, Second District, held the claim to be valid under School Code Sections 24-11 and 24-12. The school board was found to be in error in dismissing a full-time tenured teacher instead of offering her the part-time teaching position being held by a non-tenured teacher. 18/ In another opinion, an Illinois Appellate court extended this bumping privilege to include vacancies caused by attrition, such as those resulting from deaths and resignations. 19/

Courts to date, however, have not required local boards to reassign positions in order to create positions for tenured teachers who were not, under the present organization of school districts, legally qualified to bump. In a 1981 case, two teachers were dismissed due to a decision of the board to decrease the number of teachers employed because of declining enrollments, uncertainty of funding, and the discontinuance of some teaching positions. Being tenured, the teachers brought an action against the board for reinstatement to teaching positions. Basically, the teachers claimed that Section 24-12 of the Illinois School Code required a board to reassign teachers in order to create positions for them as tenured teachers. In addition, if Section 24-12 does require this action, could the tenured teachers employed by the school board be reassigned so that tenured teachers would be assigned to all classes?

One teacher who sought reinstatement was a tenured first grade teacher, and the other was a language arts teacher in the district's junior high program. The district operated one K-8 building, employing approximately 30 teachers in 1978-79. There was a departmentalized instructional program in grades 4-8, which assigned teachers to particular subject areas, such as mathematics, science, English, and social studies, for more than half of the instructional periods. During the 1979-80 school term, three non-tenured teachers were retained in the district. Neither of the two terminated tenured teachers was legally qualified to teach in any of the positions held by the non-tenured teachers, according to the qualifications set forth in State Board of Education Document Number 1. Under these conditions, the court viewed Section 24-12 as requiring the school board, when reducing

18. Edwards v. Board of Education of Diamond Lake School District No. 76, 405 N.E.2d 478 (1980).
19. Bilek v. Board of Education of District No. 87, 61 Ill. App.3d 327, 377 N.E.2d 1259 (1978).

staff, to dismiss a non-tenured teacher before dismissing any tenured teacher who was legally qualified to hold the position currently held by a non-tenured teacher. Accordingly, if the dismissed tenured teacher had the proper qualifications, then the tenured teacher would have the statutory right to bump the non-tenured teacher. However, since neither of the two terminated tenured teachers held the qualifications specified in Document Number 1, the court found they were not "legally qualified to hold the positions currently being held by non-tenured teachers and, therefore, not entitled to be reinstated." 20/ In denying the appeal to reinstate the language arts teacher, the court held that the board was not required to reassign positions in order to create a position. The board's action in dismissing both teachers was viewed as being in compliance with the statutory language contained in Section 24-12, and was not arbitrary, unreasonable, or capricious.

With respect to judicially established exceptions to a straight seniority procedure in reducing the number of teachers in a district, one court has upheld sex as a bona fide qualification. In this case a tenured full-time driver education teacher was honorably dismissed due to the elimination of this program as a full-time offering. A non-tenured teacher was employed to teach two classes of junior high health, two classes of girls' junior high physical education, and one class of co-educational sixth grade physical education. The honorably dismissed tenured teacher, while undisputedly qualified to teach the subject matter taught by the non-tenured teacher, was unsuccessful in his attempt to bump the female non-tenured teacher. Because the position included responsibilities for supervising the locker room during changing and showering after class in the two girls' junior high physical education classes, the court found that it was not unreasonable for the board to conclude that sex was a bona fide factor to be considered in the performance of the duties involved in this teaching position. 21/

Recent decisions by Illinois courts have supported the principle that a teacher who has earned tenure status in a school district does not lose that status when accepting less than full-time employment in the district. 22/ Indeed, ten-

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20. Herbach v. Board of Education for School District No. 73, 94 Ill. App.3d 889, 419 N.E.2d 456 (1981).
21. McLain v. Board of Education of Georgetown Community Unit School District No. 3, 66 Ill. App.3d 1024, 384 N.E.2d 540 (1978).
22. Brown v. Board of Education of Galatia Community Unit School District No. 1, 38 Ill. App.3d 403, 347 N.E.2d 791 (1976).

ured teachers on part-time employment status retain the bumping right of full-time teachers in contractual continued service. In a case where, due to financial exigencies, a tenured teacher's full-time employment was reduced to half-time, with a salary of one-half that of a full-time employed teacher, a teacher was successful in claiming the position of a non-tenured, full-time employed teacher. Recognizing that the tenure provisions of the School Code were intended to protect "experienced and veteran teachers against capricious, fickle and irregular exploits of school boards," the court found that the word "removed" or "dismissed," as contained in Section 24-12, encompassed any reduction in the extent of employment of a tenured teacher. As viewed by the court:

> ... limiting the application of "removed" or "dismissed" to instances of complete termination would--as a practical matter--totally obliterate the protections intended by the statute. If this were the case, a board could merely nibble away and reduce one's employment until economic necessity forced the tenured teacher to resign. Such interpretation cannot be sanctioned. ... To hold otherwise would simply emasculate the statutory tenure protections and circumvent the clear legislative intent sheltered under the canopy of the School Code. 23/

Some administrators do hold some tenure-like employment security in Illinois. Superintendents (Sec. 10-23.8) and principals (Secs. 10-23.8a and 10-23.8b) may enter into multi-year contracts, not to exceed three years in duration, with their employing boards of education. By accepting the terms of multi-year contracts, however, these administrators waive all rights granted under Sections 24-11 through 24.16 of the School Code for the duration of their employment as superintendents or principals in their employing districts. These administrators also have the right to receive a notice of their boards' intent not to renew their contracts. Superintendents must receive this notice in writing, and a specific statement must be given for non-renewal. Within 10 days after receiving such notice, a superintendent may request a closed hearing on the dismissal. At the hearing the superintendent has the privilege of presenting evidence, witnesses, and defense on the grounds for dismissal. Principals hold similar rights. A notice of intent not to renew a principal's contract must be given by the board at least 90 days before the contract expires. No principal who has

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23. Caviness v. Board of Education of Ludlow Community Consolidated School District No. 142, 56 Ill. App.3d 28, 375 N.E.2d 157 (1978).

completed two or more years of administrative service in a school district may be reclassified by demotion or reduction in rank from one position within a school district to another for which a lower salary is paid without written notice from the board of the proposed reclassification by April 1 of the year in which the contract expires. Section 10-23.8b also provides that:

> Within 10 days of receipt of this notice, the principal may request and receive a private hearing with the board to discuss the reasons for the reclassification. If the principal is not satisfied with the results of the private hearing, he may, within 5 days thereafter, request and receive a public hearing on the reclassification. Any principal may be represented by counsel at a private or public hearing conducted under this Section.
>
> If the board decides to proceed with the reclassification, it shall give the principal written notice of its decision within 15 days of the private hearing or within 15 days of the public hearing held under this Section, whichever is later. The decision of the board thereupon becomes final.

Local boards are not prohibited, however, from ordering lateral transfers of principals to positions of similar rank and equal salary. It should be noted that a significant difference exists in the hearing rights accorded superintendents and principals with tenure in a district and those enjoyed by teachers with tenure. These administrators specifically relinquish the rights granted under Sections 24-11 through 24-16 for the duration of their employment as superintendents or principals under multi-year contracts. This means the provision of Section 24-12 requiring an external, impartial hearing officer to conduct the in-district hearing is not applicable. For a hearing involving non-renewal of a superintendent's contract, or non-renewal or reclassification of a principal, the local board may conduct the in-district hearing.

The question of dual dismissal of administrators has been raised in Illinois courts. The dual dismissal dilemma arises when a board of education attempts to dismiss a superintendent or principal from his or her administrative position and from employment as a tenured teacher within the district for the same cause. Depending on the particular cause or causes involved, some courts have upheld a board's dual dismissal and other courts have revoked such actions. As cases in point, one Illinois court upheld the action of the city of Chicago Board of Education in dismissing an em-

ployee as a building principal and as a tenured teacher in the district. The principal was charged with 10 actions, which included threatening to do bodily harm to school personnel, failing to follow directives of superiors, violating various board policies, kicking a school janitor, being insubordinate, and failing to follow recommended changes for educational improvement. Since several of these behaviors were continued after the principal had been warned, the board considered the behavior of the principal irremediable and dismissed her. In the court's view, since Section 34-85 of the School Code covers teachers and principals, the principal was not entitled to be retained in the district as a teacher even though the causes for the dismissal were directed toward her administrative performance. 24/ The opposite end result of a dual dismissal occurred in a downstate school district. A superintendent's claim to a teaching position as a tenured certified employee in a school district was upheld. The board was viewed as holding the authority to remove the superintendent from his administrative position but he was, as a tenured certified employee of the district, entitled to be assigned to a position for which he was qualified and to a salary based on a reasonable classification for the position to which he was assigned. 25/

Some cases bridge the positions of teacher and administrator and tenure rights. In a case involving a school district superintendent who also did some teaching, the court clearly recognized his tenure status as a teacher. It did not, however, recognize any tenure rights for the superintendent-teacher as an administrator. As a result, the court approved the board's action in assigning him to teaching duties with an accompanying reduction in salary. Many authorities accept this case as precedent for holding that administrators do not hold tenure per se but do hold tenure rights as certified teachers in a district. 26/

Superintendents and principals may elect to receive three-year contracts rather than to continue in a contractual continued-service status (Secs. 10-23.8 and 10-23.8a). The choice is one to be made by these administrators if they are serving in tenured positions. When employing a superintendent for the first time, a board of education may elect to issue a three-year contract, or, if the person has never served as a superintendent in Illinois, it may employ him or her under a

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24. McCutcheon v. Board of Education of the City of Chicago, 94 Ill. App.3d 993, 419 N.E.2d 451 (1981).

25. Davis v. Board of Education of Farmer City-Mansfield Community Unit School District No. 17, 63 Ill. App.3d 495, 380 N.E.2d 58 (1978).

26. Lester v. Board of Education of School District No. 119, 87 Ill. App.2d 269, 230 N.E.2d 893 (1967).

two-year contract, but if this individual is serving in a principalship for the first time in Illinois, the initial contract may be for a two-year period. As previously indicated, by accepting multi-year contracts, superintendents and principals waive all rights granted to tenured teachers under Sections 24-11 through 24-16 for the duration of their employment in their administrative capacities within a district.

Dismissal of Tenured Teachers

Reasons for Dismissal.--The reasons for the dismissal of teachers with tenure are specified by statute in Illinois. A statute that enumerates the duties of school boards lists, among others, the following:

> To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher, whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however, to the provisions of Sections 24-10 to 24-15, inclusive. Temporary mental or physical incapacity to perform teaching duties, as found by a medical examination, is not a cause for dismissal. Marriage is not a cause of removal (Sec. 10-22.4).

Since Sections 24-10 to 24-15 deal with continued service, the significance of the reference to these sections in the statute just quoted lies in the board's duty being made dependent upon its following the statutory provision relating to the removal of tenured teachers.

This statutory provision--Section 10-22.4--appears to leave much to be desired because of the generality of the language in which it is couched. What, for example, constutites "incompetency" or "immorality"? What constitutes "other sufficient cause"? When is a teacher "not qualified to teach"? and when do "the interests of the schools require it"? The answers to these questions are not readily forthcoming. Much is left to the discretion of school boards, and with the matter of board discretion the courts have no concern. What we do know, however, is that a board may not act arbitrarily, and it must follow statutory procedures. It is with respect to questions involving cause or reason and procedure for dismissal that the issue of teachers' rights is likely to be raised. The guiding principle here is that the application of a state law is subject to the

fundamental requirement that it must not violate any provision of the federal Constitution or any of its amendments. This principle of law is the springboard from which teachers who contend they have been illegally dismissed launch their cases. Certainly, it cannot be argued that a board's action in dismissing a teacher because of race, color, or creed would be legal or constitutional. Such action would, without question, violate the rights guaranteed to teachers by the Constitution of the United States.

Needless to say, teachers have the right of freedom of expression--guaranteed to them by the First Amendment to the United States Constitution--and they cannot be removed for any reason that violates this right, in the absence of a showing that such action is necessary to the proper functioning of the school. In a case that originated in Illinois, the U.S. Supreme Court held unconstitutional and illegal the action of a school board in removing a teacher on the grounds that a letter written by him criticizing the school board, which was published in a local newspaper, was detrimental to the best interests of the school. The Court reasoned that the board's action violated the teacher's right to freedom of expression. 27/

The letter in question was critical of the board's action in supporting a tax increase and of the way in which it handled the district's funds. It also contained some factual inaccuracies. In taking the action it did, the court said:

> ... in a case, such as this, absent proof of false statement knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment.

It also said:

> ... the interest of the school administration in limiting a teacher's opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public.

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27. Pickering v. Board of Education, 88 S.Ct. 1731 (1968).

This does not mean that a teacher may do or say anything he or she wishes and justify the actions as freedom of expression. It seems quite clear that, while outside the classroom the teacher has the rights of any other citizen, this does not mean that the teacher may use the classroom as a forum for expressing opinions on any and all subjects. Concerning this, a federal district court, in a case that originated in Nebraska, said: "Although a teacher has a right to express opinions and concerns, as does any other citizen, on matters of public concern ... I doubt if she has a right to express them during class in deliberate violation of a superior's admonition not to do so, when the subject of her opinions and concerns relates to internal affairs of the school." 28/ In this same case the court stated that it doubted that a teacher had a "constitutional right to teach politics in a course in economics."

In a Wisconsin case, decided by a federal district court, it was held that a teacher's right to freedom of expression would be violated by denying her the right to engage in demonstrations outside school hours. 29/ And in a case in Illinois, a federal court has held that teachers have "the right of free association" and their "right to form and join a union is protected by the First Amendment." Accordingly, the court held a teacher could not be dismissed solely because of membership in a teachers' union. 30/

With respect to freedom of speech or academic freedom, it has been held, in a case originating in Illinois, that teachers do not hold absolute control over in-class speech. In a dismissal action against three teachers, a board of education successfully claimed that a brochure containing various poems, pictures, and an article had materials which referred to the apparent "joys of drug use," and which encouraged the use of vulgarities, participation in sexual behavior, and throwing off "disciplines imposed by moral environments of their homelife," was inappropriate for eighth grade students and irrelevant to the approved subject matter being taught. The dismissal action by the board was viewed as not being arbitrary or capricious, and was not an invasion of the teachers' First Amendment rights. In rejecting the teachers' claim of academic freedom in the classroom, the court noted that teachers are not given carte blanche academic freedom to conduct that can reasonably be deemed both offensive and unnecessary to the accomplishment of educational objectives. The court found that the age and sophistication of the students, the relevance of the educational purpose,

28. Ahern v. Board of Education, 327 F.Supp. 1391 (1971).
29. Abel v. Gousha, 313 F.Supp. 1030 (1970).
30. McLaughlin v. Tilendis, 398 F.2d 287 (1968).

and the context and manner of presentation employed by the teachers did not support their claim. 31/

These cases illustrate that a school board cannot remove a teacher for reasons that violate the teacher's constitutional rights. They also serve to illustrate the difficulty in determining what those rights are and the reasons for which a board may discharge a tenured teacher. Suffice it to say, each case must be considered separately and individually, since the decision rendered in a particular case is applicable only to another case in which the facts are identical or approximately so.

Causes v. Charges for Dismissal.--In preparing to dismiss tenured teachers, school boards are required by Section 24-12 to specify both the cause(s) and the charge(s) prompting the dismissal. The legal causes for dismissing tenured teachers in Illinois are specified in Section 10-22.4 of the School Code, as previously identified. If a school board attempts to dismiss a tenured teacher for a cause which is not included in Section 10-22.4, the dismissal action is likely to be denied by the hearing officer or on appeal under administrative review procedures. Illinois courts have dealt with such situations and have typically ruled that, without the cause or causes for the dismissal being specified, the dismissal action may be held invalid. 32/ In other cases the courts may allow a board the opportunity to specify exactly what the cause for dismissal is by remanding the case to a lower court for making specific findings. 33/

In addition to being informed of the cause(s) for dismissal, a tenured teacher has the right to be informed of the specific charges made by the board before a hearing is conducted. Charges are commonly identified as specific acts which a teacher has committed, or which have not been done, or specific behavioral incidents. These charges must support the cause(s) for dismissal, and the board must provide the teacher with a written notice of the charges at least 21 days before the hearing date. Failure by the board to notify the teacher of the charges associated with the dismissal action has been interpreted as prohibiting the board from using any evidence concerning those charges at a dismissal hearing. 34/

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31. Brubaker v. Board of Education of School District 149, 502 F.2d 973 (1974).
32. Carroa v. Board of Education of the City of Chicago, Ill. App.3d 33, 360 N.E.2d 536 (1977).
33. Reinhardt v. Board of Education of Alton School District No. 11, 61 Ill.2d 101, 329 N.E.2d 218 (1975).
34. Aulwurm v. Board of Education of Murphysboro Community Unit School District No. 186, 67 Ill.2d 434, 367 N.E. 2d 1337 (1977).

Illinois courts have been diligent in enforcing the requirement of notice of charges. A charge for dismissal must be more than a statement of the cause for dismissal. If a charge against a tenured teacher is a mere verbatim restatement of the cause for a dismissal action, courts have found that the charge lacks specificity and is insufficient to uphold a dismissal action. 35/ Other courts have allowed boards the opportunity to provide the teacher with a revised, more detailed statement of the charges. 36/ Illinois courts also require that the statement of dismissal charges be sufficiently clear and precise to allow the teacher the opportunity to prepare a defense or to refute the board's charges. 37/

Courts have also recognized that the board is responsible for not only making the initial pre-hearing determination to dismiss a tenured teacher but also officially notifying the teacher of both the causes and charges associated with the dismissal. In a case where the notification was issued by the teacher's principal, an Illinois court found this procedure to be faulty and overturned the dismissal action. 38/ When notifying the tenured teacher, the board must determine not only if the causes and charges are sufficient grounds for dismissal but also if the teacher's behavior is remediable or irremediable. In a case where the determination is made that the behavior is irremediable, the notice of dismissal containing both the causes and charges may be served on the teacher without prior written warning. However, in a case where the behavior is judged to be remediable, the local board must send the tenured teacher a written warning indicating that if the behavior is not corrected according to the board's requirements within a reasonable period of time, the causes and charges may then be considered as grounds for dismissal. 39/ In all cases, however, the hearing officer is empowered to determine if the causes and

35. Wells v. Board of Education of Community Consolidated School District No. 64, 85 Ill. App.2d 312, 230 N.E.2d 6 (1967).

36. Pearson v. Board of Education of Community Unit School District No. 5, 12 Ill. App.2d 44, 138 N.E.2d 326 (1956).

37. Grissom v. Board of Education of Buckley-Loda Community Unit School District No. 8, 75 Ill.2d 314, 388 N.E.2d 395 (1979).

38. Litin v. Board of Education of the City of Chicago, 72 Ill. App.3d 889, 391 N.E.2d 62 (1979).

39. Paprocki v. Board of Education of McHenry Community High School District No. 156, 31 Ill. App.3d 112, 334 N.E.2d 841 (1975).

charges are sufficient to warrant the dismissal of a tenured teacher and if the behavior is remediable or irremediable. 40/

Remediable v. Irremediable Behavior.--In a dismissal action for cause against a tenured teacher contemplated by a local district board of education, the board must make the original determination that the teacher's behavior is either remediable or irremediable. If the determination is made that the behavior is irremediable, the board may proceed with the dismissal process as described in the statutes. If, however, the board concludes that the teacher's behavior is remediable, a different set of procedures has been prescribed by the School Code and the Illinois courts. In general, the courts have determined that the behavior is irremediable when the damage done by the teacher's action or failure to act results is irreparable damage being done to students, to the school faculty, or to the school itself. In addition, the behavior must be such that the damage could not have been corrected even if the teacher had received a warning by school authorities when they learned of the behavior. 41/

As previously indicated, when a board, which is considering causes and charges for dismissal, deems a behavior irremediable, it does not have to serve a tenured teacher with a written warning prior to notification of dismissal. As an example of such a situation in Illinois, a tenured fifth grade teacher was dismissed on the cause of "in the best interest of the school" and for the charge of "insubordination." The charge against the teacher was refusing to report for work for three school days. The sequence of events which led to the dismissal action basically involved the teacher's requesting a five-day professional business leave to attend an International Reading Council Convention in Houston, Texas. The board of education tabled the request and asked the teacher to attend the next meeting of the board. The teacher, after having told some other teachers and her principal that she did not care what the board decided, for she was going to attend the convention anyway, did not attend the board meeting, and her request for the leave was denied. Her superintendent advised her to submit another leave request to the board, which she did. She then left for the convention. The board denied this request and passed a resolution dismissing her for the cause and the charge previously indicated.

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40. Board of Education of Niles Township High School District No. 219 v. Epstein, 72 Ill. App.3d 723, 391 N.E.2d 114 (1979).

41. Gilliland v. Board of Education of Pleasant View Consolidated School District No. 662, 67 Ill.2d 143, 365 N.E.2d 322 (1977).

In considering the irremediability of the cause for her dismissal, the hearing officer observed that her statements to other teachers and to her principal that she would attend the reading convention in Texas regardless of whether the board approved "would appear to be conclusive of the fact that if additional warnings had been given, the cause of dismissal would not have been corrected." With respect to any damage caused by the teacher's absence, the hearing officer found that even though the students may not have been damaged, "there was damage to the faculty and to the school itself in that the authority of the Board was challenged and openly defied...." Based on these findings, the hearing officer ruled that there was sufficient evidence to support the board's findings that her conduct was irremediable and upheld her dismissal as proper. The hearing officer's ruling was affirmed by the Third District Court of Appeals. The latter court summarized its review by stating, "Clearly her conduct was intentionally insubordinate, and the finding that her act of insubordination was not remediable was appropriate." 42/

In some cases, behavior which may have been remediable at one point in time may become irremediable if continued over a long period of time. In such cases, courts may consider the damage done by the behavior as a composite rather than as a singular event, as was the situation in the case cited above. 43/ The board, when determining that the tenured teacher's behavior is remediable, must give the teacher a notice to remedy. Not only should this notice identify the behavior, but it also should detail the steps the teacher is expected to take to remediate. If such a notice does not provide the teacher with a "reasonable" amount of time to correct the behavioral deficiency, Illinois courts will usually overturn a subsequent dismissal action by the board. 44/

It should be remembered that the board, while making the original determination that a tenured teacher's behavior is remediable or irremediable, and if remediable what the appropriate corrective actions to be taken and what a reasonable amount of time to remediate are, is subject to the final in-district decision by the hearing officer who presides over the dismissal hearing. 45/ Illinois courts have clearly

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42. Christopherson v. Spring Valley Elementary School District No. 99, 90 Ill. App.3d 460, 413 N.E.2d 199 (1980).

43. Gilliland v. Board of Education of Pleasant View Consolidated School District No. 662, 67 Ill.2d 143, 365 N.E.2d 322 (1977).

44. Board of Education of School District No. 131 v. Illinois State Board of Education, 82 Ill. App.3d 820, 403 N.E.2d 277 (1980).

45. Morris v. Board of Education of City of Chicago, 96 Ill. App.3d 405, 421 N.E.2d 387 (1981).

held that hearing officers have the authority to review this decision by the board and, if the decision is not supported by the evidence, may reverse the dismissal decision. 46/

Suspension of Tenured Teachers.--Tenured teachers appear to be subject to two types of disciplinary suspension. The first type is addressed in the Illinois School Code, Section 24-12, which specifically provides the authority for a local board, if in its opinion the best interest of the school requires it, to suspend a teacher pending a hearing. The second type, which is not mentioned in the School Code, is a disciplinary suspension, usually without pay and for a specific number of days, not associated with a pending dismissal hearing.

In the case of a pre-hearing suspension, it is clear that this is a discretionary and not a mandatory action by the board. In addition, in the case of a teacher who is cleared of the cause(s) and charge(s) which motivated the dismissal proceeding, the School Code requires that the teacher shall not suffer the loss of any salary by reason of the suspension. The earliest test of this School Code provision occurred in 1956. A tenured teacher received notice of dismissal for cause and ultimately sued for reinstatement and damages. As an element of the notice of discharge, he was informed of his immediate suspension from September 3 until November 4, the date he would be dismissed. In ruling on the case, the court tacitly allowed the suspension of the teacher without pay to stand. Although primarily concerned with questions other than suspension, this was the first consideration of a tenured teacher's suspension pending a hearing. 47/

Ten years later, an Illinois appellate court addressed the question specifically. In Yuen, a tenured teacher was dismissed for causes specified in the Code. Unlike the Pearson case, Yuen specifically charged as error his suspension pending the results of the dismissal hearing. The court, with equal specificity, held that the suspension of the teacher during the pendency of the hearing was supported by statute. For the first time, this provision of Section 24-12 was tested directly and upheld. 48/

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46. Board of Education of School District No. 131 v. Illinois State Board of Education, 82 Ill. App.3d 820, 403 N.E.2d 277 (1980).

47. Pearson v. Board of Education, Community Unit School District No. 5, 12 Ill. App.2d 44, 138 N.E.2d 326 (1956).

48. Yuen v. Board of Education of School District No. U-46, 77 Ill. App.2d 353, 222 N.E.2d 570 (1966).

The issue of a teacher suspension not involving a pending hearing has been brought before Illinois courts and one federal court with jurisdictional control in Illinois. Following a tenured teacher's three-day suspension without pay for cursing a student while performing his duties as an assistant football coach, he brought an action against the board seeking to invalidate the suspension. He was given notice of the board's action and informed of his right to a review before the board. He requested and received such a review and, during the hearing, challenged the board's jurisdiction to suspend him for disciplinary reasons. After raising this objection, he refused to participate in the hearing. The board, hearing the matter in the absence of the teacher, declared him to be suspended for three days without pay. 49/ In the litigation that followed, two principal questions evolved: Does a school board have the authority to suspend a tenured teacher temporarily as a disciplinary act? Must a board follow the requirements of Section 24-12, including notice and hearing before an independent hearing officer, in this situation? The first question was answered easily. In the court's opinion, a board's authority to dismiss tenured teachers permanently was construed to include the power to dismiss, or suspend, them temporarily. However, the second question was not as simple to address.

In Craddock, the court reasoned that the power to dismiss, contained in Section 24-12, should be reasonably and justly construed to mean not only the power to dismiss permanently but also the power to dismiss or suspend temporarily. The court further reasoned that suspension, or temporary dismissal, could only be exercised in compliance with the procedures specified in Section 24-12. Even a temporary dismissal was viewed as a "black mark" on the tenured teacher's record and teaching abilities, which would create a stigma certain to affect the teacher's future employment. The purpose of the teacher tenure law (Sec. 24-12) is to afford tenured teachers procedural safeguards when their livelihood or tenure status is threatened and to alleviate their insecurity of employment based on political, partisan, or capricious considerations. Furthermore, an independent hearing officer, as required in the law, helps lessen inequities which may result from a school board's hearing and deciding a case in which it has already made an initial decision to discipline a teacher, having passed the three-day-suspension-without-pay motion against the teacher. In this instance, the court stated that the board could not be both "antagonist and judge" and still provide due process to the teacher. Since no hearing officer was appointed in conformity with the provision

49. Craddock v. Board of Education of Annawan Community Unit School District No. 226, 76 Ill. App.3d 43, 391 N.E.2d 1059 (1979).

of Section 24-12 in the Craddock case, the court held for the teacher. Even though Section 24-12 was viewed as the basis of a school board's authority to suspend a tenured teacher, the court held that Section 24-12's procedural requirements must be followed. When this case was affirmed by the Illinois Supreme Court, the court found that the board did not have a policy governing or authorizing teacher suspension and that without a governing policy, the board must procedurally follow the requirements of Section 24-12. 50/

In a federal district court case in Illinois, a tenured teacher contended that he was constitutionally entitled to have an impartial hearing officer decide the validity of the board's insubordination charges. In disagreeing, the court found that the board was to be presumed an honest, impartial tribunal in the absence of any facts showing a high probability of actual bias. The minimum requirements for due process in this instance were considered to be a clear and actual notice of the allegations, a notice of the person who made the charges, a reasonable time and opportunity to present evidence, and a hearing before an impartial tribunal. These due process requirements had been met, and the board's action was upheld. 51/

The Dismissal Hearing.--The State Board of Education is charged with the responsibility for promulgating uniform standards and rules of procedure for hearings involving the dismissal of tenured teachers for cause (Sec. 24-12). Pursuant to this charge, the State Board has developed the Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois. These rules do not apply to dismissals of non-tenured teachers, compulsory retirement at age 70, the discontinuation of a particular teaching service, or dismissals as a result of a decrease in the number of teachers employed in a school district. Fundamentally, the State Board rules require certain procedures to be followed in dismissal actions against tenured teachers. These procedures are:

1. The hearing shall be public at the request of either the board or the teacher. The hearing officer shall exclude witnesses during the testimony of other witnesses upon the motion of either party.

2. The parties may be present and represented at the hearing by counsel and by other authorized representatives.

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50. Craddock v. Board of Education of Annawan Community Unit School District No. 226, 81 Ill.2d 28, 405 N.E.2d 794 (1980).

51. Engelbrecht v. Hudson, F. Supp., Memorandum Opinion and Order No. 77 C 429 (1979).

3. The order of proceedings shall be as follows:

   a. The hearing shall be opened by the recording of the place, time, and date of the hearing; the presence of the hearing officer and the parties and counsel, if any; and any stipulations as to facts. Pre-hearing motions shall be heard at this time.

   b. Upon the opening of the hearing, the hearing officer shall allow the parties to make opening statements.

   c. The board shall proceed first to present its evidence.

   d. The teacher may confront the witnesses, offer evidence, and present a defense.

   e. The hearing officer shall administer oaths to all individuals giving testimony.

   f. The hearing officer may issue subpoenas requiring the attendance of witnesses and, at the request of either of the parties, shall issue such subpoenas but may limit the number of witnesses to be subpoenaed in behalf of either party to not more than 10.

   g. The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenotype notes of all the testimony.

   h. The hearing officer shall make rulings on the admissibility of exhibits offered by either party as evidence. The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record.

   i. The hearing officer for good cause shown may continue the hearing upon the request of the teacher or the board or upon his or her own initiative and shall adjourn when the teacher and the board agree thereto.

   j. The hearing may proceed in the absence of either party, who, after due notice, fails to be present or fails to obtain a continuance.

   k. A decision of dismissal shall not be made solely on the default of the teacher. The hearing officer shall require the board to submit such evidence as he or she may need for an understanding

and a determination of the dispute, including but not limited to proof of due notice.

l. The hearing officer may, in his or her discretion, vary the normal procedure under which the board first presents its claim, but in any case, he or she shall afford full and equal opportunity to all parties for presentation of relevant proofs.

m. At the close of the hearing, each party may make a closing statement (orally and/or written at the discretion of the hearing officer), incorporating arguments of fact and law.

The State Board rules also require that the hearing officer, in addition to the Section 24-12 requirement of accreditation by a national arbitration association and non-residency in the school district involved in the hearing, must be disinterested and impartial and must have no financial or personal interest in the results of the hearing. At the close of the hearing, the hearing officer is required to make a decision, including a finding of facts, and a written copy of the decision must be given to the teacher, the school board, and the State Board of Education no later than 30 days from the date of the closing of the hearing. It should be clearly recognized that the decision of the hearing officer, and not the local board of education, is the final decision if neither party appeals. Section 24-16 grants both the teacher and the board the right, under the Administrative Review Act, to institute appeal proceedings for judicial review of the hearing officer's decision (Ill. Rev. Stat., Ch. 110, 1975). Also, as provided by Section 24-12, in the event such review is instituted, any costs of preparing and filing the record of proceeding from the dismissal hearing shall be paid by the school board.

CHAPTER IX

Teacher Retirement

"The State legislature is charged with the duty of providing the residents of this State a free and public educational system. Such a system requires qualified and competent teachers. . . . Under these circumstances, for the legislature to determine that the welfare of the public-school system required that a system of retirement allowances be set up for them as a group does not seem unreasonable, and there seems ample justification to distinguish them as a class for that purpose."—*Krebs* v. *Board of Trustees of Teachers' Retirement System*, 410 Ill. 435, 102 N.E.2d 321 (1951).

Introduction

The first Illinois State Teachers' Pension and Retirement Fund was created by the General Assembly in 1915. Teachers who entered service after July 1, 1915, were mandatorily included in the fund. The present Teachers' Retirement System of the state of Illinois superseded the original pension fund in 1939. From July 1, 1939, to date, extensive amendments, reflecting changes in the benefit structure and contribution rates for members, have been enacted. 1/

Administration.--The Teachers' Retirement System is a defined benefit plan governed by Article 16 of the Illinois Pension Code. A nine-member board of trustees is authorized to carry out the provisions of the article and to appoint an executive director who is responsible for the general administration of the System. The board is comprised of the State Superintendent of Education, who is president of the board; four persons from the public sector appointed by the Governor; and four members of the System elected by members and annuitants. 2/

Revenue.--Three primary sources of revenue flow into the Teachers' Retirement System. These are contributions from active members, appropriations from the General Assembly, and income from investments.

The requirement member contribution rate is 8 percent of gross earnings. The contribution rate is designated for the following:

6.5 -- for retirement benefits
0.5 -- for post-retirement increases
1.0 -- for survivor benefits

By law member contributions cannot be used to pay monthly benefits for those already on retirement, nor to offset administrative costs of the System.

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1. The authors wish to express their appreciation to Samuel W. Anderson, Acting Director of the Illinois Teachers' Retirement System, for his assistance in preparing the section of this chapter which explains the Teachers' Retirement System in Illinois.

2. The Chicago School District has a separate retirement system with similar benefits. The office of the Public School Teachers' Pension and Retirement Fund of Chicago is located at Builder's Building, 228 North LaSalle Street, Chicago, Illinois 60601. Persons eligible under this system should contact the Chicago Teachers' Retirement Fund for specifics.

Investment income is a major contributor to the overall financial strength of the fund. The invested assets of the Teachers' Retirement System, as of June 30, 1981, had a market value of approximately $2.4 billion. These investments consisted of the following percentages:

U.S. government securities	8
Corporate fixed income securities. . . .	59
Common and preferred stock	30
FHA insured mortgage loans	3
	100

The Illinois Pension Code defines the types of investments available to the System. All investments are approved by the board of trustees upon recommendations made by investment advisors retained by the board.

Membership.--Membership in the Teachers' Retirement System is mandatory for all certified teachers employed in the public schools of Illinois (except Chicago), provided employment is on a regular, full-time basis consisting of four or more clock hours daily, or, if not full-time, on a permanent and continuous basis in a position in which services are expected to be rendered for a full and complete school term. Membership in the System is also required for teachers employed under the above conditions in several state institutions, as well as for certain certificated executives employed by the state of Illinois in educational administration.

Subject to certain limitations, additional service credit may be granted for the following types of service: substitute teaching for at least 20 days in any school term, provided each day consists of four or more clock hours; out-of-system service completed in the public schools of other states or in schools operated under the auspices of the U.S. government; an official leave of absence granted after July 1, 1963, provided the member returns to teaching following the leave; part-time teaching completed prior to July 1, 1969, provided the member is employed on a permanent and continuous basis for the entire school term; and military service, provided the member's entry into the military was immediately preceded by Illinois teaching service.

These types of optional service credit require additional contributions from the member. In addition, credit is granted at retirement for unused accumulated sick leave established with the last employer, provided no payments are received by the teacher for those days. The maximum allowable credit of one-half year results from the accumulation of 85 days. No additional contributions are required for such benefit.

Continuity of Credit Within Illinois.--The Teachers' Retirement System is one of 13 systems included in the provisions of the Retirement System's Reciprocal Act, which assures continuous pension credit for public employment in Illinois. Under the provisions of this act, a member's credit and contributions remain with the system in which they are established. Upon retirement, the combined credits are considered in the determination of benefit eligibility and amounts.

Benefits

Benefits from the Teachers' Retirement System are guaranteed by Article XIII, Section 5, of the 1970 Illinois constitution. The System provides disability, survivor, and age retirement benefits for qualified members. 3/

Disability.--A member who becomes disabled while employed as a teacher or within 90 days of such employment may be eligible for benefits, provided two licensed physicians verify the disability; however, no benefits may be paid while the member is entitled to receive salary (either regular or sick leave) from the employer. There are three types of disability benefits available for members who meet the qualifying conditions. These are temporary disability benefits, permanent disability benefits, and accidental disability benefits.

a. Temporary disability benefits.--These benefits are available for teachers with at least three years of creditable service. The amount of these benefits is 40 percent of the current salary, and service credit is granted during the period such benefits are paid.

The effective date of temporary disability benefits is the latest of: (1) the 31st calendar day of absence; (2) the day following the last day for which salary is payable; or (3) the date notification is received, if more than 90 days from the commencement of the disability.

Temporary disability benefits are payable until one of the following events first occurs: (1) the disability ceases; (2) the member accepts any gainful employment; (3) the member

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3. Conditions involving claims for benefits may require further clarification. Members of the Teachers' Retirement System are advised to contact the System at 2815 West Washington Street, P.O. Box 4057, Springfield, Illinois 62708, for verification of current status.

receives benefits for a period equal to one-fourth of his or her creditable service. The following limitations are also applied: (1) if disability occurs prior to attaining age 60, benefits cease at age 65 or (2) if disability occurs at age 60 or over, benefits cease after five years or attainment of age 70, whichever occurs first.

A member receiving temporary disability benefits may elect to transfer to permanent disability benefits or, if eligible, to an age retirement allowance.

b. Permanent disability benefits.--These benefits are available for teachers who remain disabled after they have received temporary disability benefits for the maximum eligible period. The benefits are payable the day following the last day for which temporary disability benefits are paid. No service credit is granted while a member is in receipt of these benefits.

The amount of permanent disability benefits is the greater of 35 percent of the last salary or: (1) if disability occurs before age 55, the amount computed by the formula used for an age retirement allowance, reduced by 0.5 percent for each month the member is under age 55 or (2) if the disability occurs at age 55 or over, the age retirement amount is reduced by 0.5 percent for each month the member is under age 60.

Permanent disability benefits are payable until the disability ceases or until the member returns to teaching. Gainful employment other than teaching is permitted within earnings limitations.

c. Accidental disability benefits.--These benefits are available for teachers under age 70 who become disabled as the result of duty-related accidents or illnesses; however, the Illinois Industrial Commission or the employers' insurance carriers must verify that the claims are compensable under a worker's compensation program before any benefits will be paid. The benefit amount is 60 percent of the current salary, reduced by any amounts payable under the worker's compensation program.

The effective date of accidental disability benefits will be the later of: (1) the day following the last day for which salary is payable or (2) the date notification is received, if more than 90 days after commencement of the disability. Service credit will be granted while the member is receiving these benefits.

Accidental disability benefits cease when the member is able to engage in any gainful employment or when he or she meets one of the following limitations: (1) if disability occurs prior to age 60, benefits cease upon attainment of age

65 or (2) if the disability occurs at age 60 or over, benefits cease after five years or after attainment of age 70, whichever occurs first. Members who are receiving accidental disability benefits may elect to transfer to an age retirement allowance if they meet the minimum age and service requirements.

Survivor Benefits.--Benefits are available to survivors of members, provided death occurs: (1) during their employment as teachers; (2) during the first year following termination of such employment; or (3) during retirement. Survivor benefits are payable to the beneficiaries designated by the member in one of two forms: lump sum settlement or monthly income option.

a. Lump sum settlement.--This benefit is available to both dependent and non-dependent beneficiaries. Dependent beneficiaries (spouses, unmarried children under age 18, dependent parents) may elect this settlement in lieu of monthly benefits. Non-dependent beneficiaries (any individuals other than dependent beneficiaries, organizations, members' estates) are eligible for this settlement only.

A lump sum settlement consists of two cash amounts: (1) a refund of accumulated contributions (excluding the 1 percent survivor benefit contribution) not previously received as retirement income plus (2) a cash settlement based upon the final salary rate as a teacher (maximum equals an amount equivalent to the final salary rate; minimum equals one-sixth the final salary).

b. Monthly income option.--This benefit is payable to dependent beneficiaries, provided the member had established 1-1/2 years of credit at the time of death. A spouse with no minor children must be age 50 to receive monthly benefits.

The monthly income option includes two cash settlements in addition to the appropriate monthly benefits. These are: (1) a return of accumulated contributions not previously received as retirement income plus (2) a $1,000 one-time payment.

The amount of monthly income that is payable depends on the family situation; however, this amount is subject to maximums of $400 per month for one dependent beneficiary and $600 per month for two or more dependent beneficiaries. (Exception: 50 percent of the deceased member's earned monthly retirement allowance will be paid if it is greater than the above maximums.)

Monthly survivor benefits are payable to a spouse for life unless remarriage occurs prior to age 55. Such benefits will terminate upon the death, marriage, or attainment of age 18 for a minor child.

An inactive member (one who terminated teaching, for reasons other than retirement, more than one year prior to death) who has at least 20 years of service credit has a vested interest in survivor benefits; however, survivors of an inactive member with less than 20 years of credit will receive only a return of accumulated contributions.

Retirement Benefits

Age Retirement.--A member qualifies for an age retirement allowance after attaining one of the following combinations of age and service credit: age 62 with 5 years; age 60 with 10 years; age 55 with 20 years. If retirement occurs between the ages of 55 and 60, with less than 35 years of service, the allowance will be reduced at the rate of 0.5 percent for each month the member is under age 60.

The amount of the retirement allowance is determined by two factors. The first is the average salary which is the average of the four highest consecutive salary rates within the last 10 years of creditable service. For years after June 30, 1979, each annual salary rate used cannot exceed the previous year's full-time rate by more than 20 percent.

The second factor is the percentage of average salary to which the member is entitled. This percentage is determined by years of service, according to the following formula:

-- 1.67% for each of the first 10 years, plus
-- 1.9 % for each of the next 10 years, plus
-- 2.1 % for each of the next 10 years, plus
-- 2.3 % for each year over 30

The maximum allowance, 75 percent of average salary, is attained with 38 years of service. In determining the member's actual allowance, the System will use total credit (including fractional years) and the member's exact age.

A member with less than 35 years of service may use the early retirement option to avoid the discount for early retirement, provided the following conditions are met: (1) retirement occurs before June 30, 1985, and within six months of the last day of contributing service and (2) the member and employer each make a one-time contribution to the System. The required employee contribution is 7 percent of the final full-time salary rate for each year the member is under age 60. The employer contribution rate is 20 percent for each year the member is under age 60. This option may be limited by the employer to a maximum of 30 percent of those eligible, based upon seniority in the service of that employer.

Upon retirement, the member may select one of two types of allowances. The life annuity provides the largest allowance payable throughout the life time of the member. The reversionary annuity results in the members' receiving an allowance which is reduced to provide a monthly benefit, in addition to any amount payable under the Survivor Benefits Program, to a surviving designated beneficiary.

Annual Post-retirement Increases.--The Retirement System provides automatic annual increases in the original age or disability retirement allowance for members with at least one year of contributing service after July 1, 1969. The current rate of increase is 3 percent of base pension, with the initial increase payable the later of: January 1, following attainment of age 61, or January 1 following the first anniversary in retirement.

Retired members with no service after July 1, 1969, may also be eligible for a 3 percent annual increase; however, they must make a nominal one-time contribution to the System before the increase is payable. For these annuitants, the effective date of the post-retirement increase will be the later of: (1) January 1, following attainment of age 65; (2) January 1, following the first anniversary in retirement; or (3) the first of the month following payment of the qualifying contribution.

Minimum Retirement Allowance.--The Teachers' Retirement System also provides a minimum retirement allowance, which is an amount equal to $10 per month for each year of creditable service to a maximum of $300 per month. A retired member who is receiving an allowance which is less than the minimum may qualify for this benefit; however, a nominal one-time contribution to the System is required. The minimum retirement allowance is payable the later of: (1) September 1, following attainment of age 60; (2) September 1, following the first anniversary in retirement; or (3) the first of the month following payment of the qualifying contribution.

Refunds

A member may apply for a refund of contributions four months from the last day of teaching employment, provided an official resignation is submitted to and accepted by the employer. A refund includes all retirement contributions without interest. The 1 percent survivor benefit contribution is not refundable.

Upon acceptance of a refund, the member forfeits all service credit with the System. Such credit may be re-established if the member returns to teaching service in a position

requiring contributions to the System for at least one year and repays the refund with interest.

Judicial Interpretations of Retirement Legislation

Introduction.--While the statutes governing the Illinois Pension Code have been subject to legislative changes, litigation involving teacher participation in the Illinois Teachers' Retirement System has been relatively infrequent. The litigation that has occurred in this area may be divided into two groups: (1) cases brought by taxpayers generally challenging the constitutionality of using public funds for paying some form of retirement benefits to teachers and (2) cases brought by teachers or teachers' organizations challenging actions affecting personal or group financial status within the retirement system.

Taxpayers' Suits.--Illinois courts are unanimous in the opinion that state statutes providing public funds to support specific retirement system expenditures do not violate any constitutional rights of taxpayers. An early case testing this conclusion involves a taxpayer's suit against the board of trustees of the Illinois Teacher's Retirement System which claimed the paying out of public funds for increasing the age retirement and disability allowances to retired teachers was unconstitutional. 4/ In dismissing the taxpayer's challenge, the Supreme Court of Illinois observed:

> The State legislature is charged with the duty of providing the residents of this State a free and public educational system. Such a system requires qualified and competent teachers. The legislature requires these teachers to have certain qualifications. The legislature, by tax laws, provides the means by which these teachers are paid during their teaching careers and thereby, at least indirectly, fixes the amount of their compensation. Under these circumstances, for the legislature to determine that the welfare of the public school system required that a system of retirement allowances be set up for them as a group does not seem unreasonable, and there seems ample justification to distinguish them as a class for that purpose. The legislature may have determined that under all

4. Krebs v. Board of Trustees of Teachers' Retirement System, 410 Ill. 435, 102 N.E.2d 321 (1951).

> these circumstances the State had a moral obligation to them and we have held that the expenditure of public money for a moral obligation is an expenditure for a public purpose.... They are reasonably classified as a group for the purpose of providing retirement allowances, and an increase of such allowances is not violative ... of the State constitution....

Another taxpayer's suit against the System claimed that public funds could not constitutionally be used for increasing the annual retirement payments to teachers who were retired. Since the funds from which the increased benefits were to be paid were not contributed by the teachers or their employing school district, but were derived solely from taxation, this challenge was based on the argument that this was an unconstitutional extra payment for past services. The Illinois Supreme Court, in upholding the increased retirement payments, stated that the payments served a "public purpose" and were "not unconstitutional as a grant of extra compensation ... for past services." 5/

Teachers' Suits.--As might be predicted, the major thrust of legal actions taken by teachers or teachers' organizations against the Teachers' Retirement System involve financial rights and benefits. In the early history of the System, challenges to compulsory retirement based on age were litigated without success, 6/ as were challenges to compulsory participation in the System. 7/ In contemporary times, such issues have not been litigated and appear to be settled. One clarification from the early case law is instructive in identifying any legal "rights" a teacher may hold with respect to a pension fund. An Illinois Supreme Court opinion differentiated the rights held in a pension fund with compulsory participation from an annuity fund derived, at least in part, from voluntary contributions made under a statutory option to contribute or refrain from contribution. 8/ In 1936, the court elaborated on this earlier view by stating:

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5. Voigt v. Board of Education of City of Chicago, 413 Ill. 233, 108 N.E.2d 426 (1952).
6. People ex rel. Powell v. Board of Education of City of Chicago, 343 Ill. App. 382, 99 N.E.2d 592 (1951).
7. Raines v. Board of Trustees of Illinois State Teachers' Pension and Retirement Fund, 365 Ill. 610, 7 N.E.2d 489 (1937).
8. People ex rel. Donovan v. Retirement Board Policeman's Annuity and Benefit Fund, 326 Ill. 579, 158 N.E. 220 (1927).

> ... a pensioner has no vested right in a pension fund. ... the character of a pension fund is not changed by compulsory contributions by way of exactions from the salaries or wages of public officers and employees. It is said that such payments into the fund are not in fact payments by the officer or employee, and the employment is accepted with knowledge that certain amounts will be deducted each month and placed in the pension fund; that the money is not first segregated from the public fund so as to become private property and then turned over to the pension fund, but is set aside or transferred from one public fund to another, and remains public money over which the person from whose salary it is deducted has no control, and in which he has no right. 9/

In another instance in which members of the System were unsuccessful in claiming "contractual rights," the Supreme Court of Illinois held that the Illinois Pension Code (Ill. Rev. Stat., 1973, Ch. 108-1/2, par. 16-101, et seq.), did not grant such rights to teachers attempting to enforce a specific level of funding for the pension plan. 10/ At issue was the constitutional and statutory legality of the Governor's item reduction of certain appropriations made to pension funds in 1974. The teachers argued that Article XIII, Section 5, of the 1970 constitution created a contractual relationship between the state and participants in several teacher pension systems which the governor could not infringe upon by use of his power to reduce or veto appropriations. This constitutional provision states:

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

In its analysis of the language of the constitution, along with the proceedings of the debates concerning this section during the constitutional convention, the court found:

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9. Raines v. Board of Trustees of Illinois State Teachers' Pension and Retirement Fund, 365 Ill. 614, 7 N.E.2d 491 (1937).

10. People ex rel. Illinois Federation of Teachers v. Lindberg, 60 Ill.2d 266, 326 N.E.2d 749 (1975).

> There is ... no basis from which it might be argued that the provision was intended to restrict the Governor's constitutional authority to reduce or veto a pension appropriation measure. And it cannot be said that under the circumstances this constitutional provision affords plaintiffs the right to judicially circumvent the Governor's actions....

More recently, teachers have attempted to establish pension rights and benefits by purchasing retirement credits for time spent in active military service. A provision of the Illinois Pension Code [Ill. Rev. Stat., 1977, Ch. 108-1/2 par. 16-127 (5)] provides that military service credits may be purchased if teachers were members of the System prior to their entry into the armed forces and provided the members returned to teaching service within one calendar year after discharge. In denying the attempt to purchase such retirement credits by teachers who taught in another state prior to entry into military service, an Illinois court stated:

> By the legislation in question, the legislature has granted to veterans who taught in Illinois prior to their service a benefit in returning to teaching in Illinois not available to teachers who began their teaching here after their military service. One of the recognized purposes of a veteran's preference law is to "ease the transition from military to civilian life." ... A state may reasonably deem itself to owe a greater responsibility to ease the transition to civilian life of those who were in its employ as teachers just prior to answering the call to military service than to veterans who were not among its teachers when answering that call. 11/

Therefore, this purchase of military service credits option is considered closed to veterans who did not have prior membership in the Illinois Teachers' Retirement System.

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11. Fishman v. Teachers' Retirement System, 86 Ill. App. 3d 649, 408 N.E.2d 113 (1980).

CHAPTER X

Tort Liability of School Districts and School Employees

"... we agree with the Supreme Court of Florida that in preserving the sovereign immunity theory, courts have overlooked the fact that the Revolutionary War was fought to abolish that 'divine right of kings' on which the theory is based."—*Molitor* v. *Kaneland Community Unit District No. 302*, 18 Ill.2d 11, 163 N.E.2d 89 (1959).

Introduction

Teachers, as well as members of other professions whose activities bring them into close contact with the public, are, as a rule, much concerned about the question of liability. Since most of the concern which school districts, school officers, and school employees have regarding liability grows out of their concern for liability resulting from tort, emphasis in this chapter is placed on tort liability as opposed to other types of liability, such as contractual or criminal.

In spite of their concern regarding liability, teachers, as a rule, are not well informed about it. The opinions they hold with respect to this subject vary widely. Some believe that their employer, the school district, rather than the teachers, is liable for all injuries received by those under the supervision of the teachers. Others believe that teachers, because they are employees of school districts which in many states are immune from liability, are also immune from liability. Still others believe that teachers are personally liable for any injuries received by those under their supervision. All are incorrect, and the facts lie somewhere between these extremes.

Nature of a Tort.--Any discussion of tort liability must be prefaced by a consideration or definition of "tort." To define this term is not easy. In general, it is a private as opposed to a public wrong, which is a crime. It is a wrong against an individual, which is generally punishable by the payment of damages, as opposed to a wrong against society, which is a crime and which is punishable by a fine or imprisonment, or both. More precisely, a tort may be defined as an act or a failure to act which violates another's private rights, the appropriate remedy for which is a common law action in damages.

While there may be several sources of liability, including a breach of contract or a violation of a statute, most torts that become the basis of litigation have their origins in the concept of negligence. Therefore, it is these that will receive major attention. Before the law as it relates to such torts is considered, it is essential that "negligence" and "willful and wanton conduct" be understood.

Nature of Negligence.--From a variety of Illinois cases involving claims of negligence against school districts and district employees, it appears that, in order for negligence to be established: (1) a duty of care must be owed by the wrongdoer to the injured party, (2) a violation or breach of that duty must have occurred, (3) the breach of that duty of care must be established as the proximate cause of an injury, and (4) an injury must be real. An example of the application of these four factors is a case which was brought by a

vocational education student against his school district. When using a circular bench saw without a blade guard, he injured his hand in a high school wood shop class. In its consideration of this case, the court relied on these four concepts. The school district did hold a duty of care, which was to be carried out by the agent of the school, the teacher. If the agent violates this duty of care, it becomes a question of determining if this breech was the result of negligence or if the teacher acted in a reasonable manner. This determination is dependent on the particular circumstances and conditions surrounding each case. An additional question of fact is the consideration of "proximate cause," or the consideration that "the injury must be the natural and probable result of the negligent act or omission and be of such a character as an ordinary prudent person ought to have foreseen as likely to occur as a result of the negligence...." In upholding the student's claim in this bench saw injury case, the court established that the district, through its agent, the teacher, did owe the student a duty of care. This duty was breached by the negligent behavior of the wood shop teacher, and the proximate cause of the student's real injury was the result of the teacher's negligence. 1/

One factor inherent in the duty of care, which is essential to negligence, is the element of foreseeability of harm. In other words, for one to establish negligence, it is not sufficient to show that the wrongdoer owed a duty to the injured party and breached it, but one must show that a reasonably prudent person could or should have foreseen that the course of action pursued by the wrongdoer and complained of in the action would result in injury to the individual to whom the party owed the duty of care. In this connection, a California court said: "Negligence is established if a reasonably prudent person would foresee that injury of the same general type would be likely to happen in the absence of such safeguards." 2/ By ignoring the consequences of a party's acts which should have been forseen, one becomes liable for injuries to others on the grounds of negligence. Negligence, it should be noted, may result from acts of omission as well as from those of commission.

A Minnesota court, commenting on negligence, said:

> An essential element of negligence is knowledge, actual or imputed, by one charged therewith that his acts or omissions claimed to constitute negli-

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1. Matteucci v. High School District No. 208, 4 Ill. App.3d 710, 281 N.E.2d 383 (1972).
2. Beck v. San Francisco Unified School District, 37 Cal.Rptr. 471 (1964).

> gence would be dangerous to another.... The duty which devolves upon him is dependent upon his reason to apprehend the results which might follow his conduct, and where his conduct is such that ordinarily no injuries would reasonably be anticipated therefrom it is not negligent. 3/

It should be noted that it has been held that actions which are violative of a statute "create a presumption of negligence"--a presumption that may be rebutted by evidence "showing ... an adequate excuse" for the illegal acts. 4/

With respect to the matter of duty, it has been stated that, while a school district and/or its teachers have the duty of providing reasonable supervision over pupils, they are not the "insurer[s] of their safety at play or elsewhere." 5/ This means, of course, that all injuries received by pupils are not automatically compensable. Some are the result of pure accident and no liability attaches. It is only when the elements of "duty" and "negligence" are present that liability may attach. In this connection, it should be pointed out that the occasions for and the degree or amount of care required of one whose duty it is to care for pupils, if one is to avoid being held liable for negligence, are dependent upon the degree of the pupils' maturity, the age of the pupils, and the extent and foreseeability of danger involved. For example, teachers are expected to exercise a greater degree of care while they are supervising children exposed to dangerous machinery in a shop area than they would supervising the same pupils in a normal classroom or a study hall. Likewise, teachers are expected to exercise a greater degree of care in supervising young children, whose judgment has not yet been well developed than they would in supervising older children, whose judgment has been developed to a far greater degree. 6/

Another concept which is similar to negligence is that of willful and wanton conduct, or misconduct. A willful and wanton act is one that is committed under circumstances exhibiting a reckless disregard for the safety of others. This concept is separate from a malicious act, which is frequently considered to be something done intentionally to wrong or to harm another party. Currently, in Illinois case law, tort liability cases involving physical injury to students are ad-

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3. Wire v. Williams, 133 N.W.2d 840 (1965).
4. Hayes v. Hagemeier, 400 P.2d 945 (1963).
5. Raymond v. Paradise Unified School District, 31 Cal. Rptr. 847 (1963).
6. Satariano v. Sleight, 5 Cal. App.278, 129 P.2d 35 (1942).

judicated, under some conditions and in some circumstances, under the claim of ordinary negligence on the part of a school district and at other times, under the claim of willful and wanton conduct. 7/ The difference in the application of these two concepts is explained later in this chapter.

Liability of Governmental Agencies for Torts

Introduction.--Since a school district operates through the medium of individuals--officers and employees--if it is held to be liable for injury, the reason must be because of the negligence of its officers and/or employees. The district, being impersonal, cannot be negligent or cannot engage in willful and wanton conduct. It is those who represent the district who are negligent or who engage in willful and wanton conduct. Nevertheless, since recovery of damages is far more certain if they are assessed against a governmental agency, such as a school district, than against a teacher, who, as a rule, does not possess great wealth, actions for damages based upon negligence or willful and wanton conduct of a teacher are more likely to be brought against a district, if there is reason to believe that the district can be held liable, than against the teacher. Such cases are based upon the idea that the master is or should be liable for injuries resulting from the negligence of employees. Therefore, it behooves one, in considering the question of liability, to look at the question of the liability of the employer first, rather than that of the employee. As a general principle of tort liability of school districts in Illinois, the employer will not be held liable for ordinary negligence or for willful and wanton conduct if an employee is not liable.

Liability of the State.--It has been a long-established principle of common law that the state is not liable in damages for injuries resulting from the negligence of its officers, agents, or employees. This doctrine of immunity from liability for tort is frequently traced back to the divine right of kings. In the early days it was held that the king could do no wrong, and, therefore, because he could do no wrong, the sovereign was immune from liability. As the American colonies became independent, and changed their status to that of states, their form of government changed, and the sovereignty which formerly was vested in the king became vested in the state. It was an easy matter, then, to transfer the immunity formerly vested in the king to the state. So, the doctrine of state immunity from tort liability came into

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7. Gerrity v. Beatty, 71 Ill.2d 47, 373 N.E.2d 1323 (1978).

being. A state may, however, by legislative or judicial enactment abolish this immunity status. Illinois is a state which in the past ordinarily vested public school districts with immunity 8/ but eventually divested school districts of this status by judicial actions. 9/

Liability of School Districts Under Common Law.--Because school districts are agencies, or arms, of the state, it has been held that the immunity which clothes the state also clothes school districts and their administrative bodies--boards of education. 10/ In addition to reasoning that the district--or school board--like the state is immune from liability, some courts in support of the immunity doctrine argue that the district has no funds out of which it can pay damages. 11/ They reason that school funds are trust funds and cannot be diverted from the purpose for which they have been raised; so, to hold the district liable would be futile, as there is no way whereby it could discharge its liability. Then, too, it is frequently pointed out that the master-servant relationship--under which it is held that the master is liable for the negligence of the servant--does not exist between school districts and school boards and their agents and employees. 12/

Regardless of the reason or reasons assigned therefor, it is a general principle of common law that, in the absence of statute to the contrary, a school district is not liable for the negligence of its officers, agents, or employees. Illinois court decisions have, as will be shown later, had the effect of eroding this principle. This doctrine of immunity applies to injuries sustained by pupils both on and off school property. It also applies to injuries received by third parties, such as workers employed in constructing or repairing school buildings and authorized visitors on school property.

Liability of Districts Under Statute.--As was indicated, the legislature may, if it wishes, abrogate the common law rule and make school districts liable in damages for injuries resulting from the negligent acts of their officers, agents, or employees. California, New York, and Washington are examples of states whose legislatures have taken such sweeping action. In addition, certain other states have provided for

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8. Kinnare v. City of Chicago, 171 Ill. 332, 49 N.E. 536 (1898).

9. Molitor v. Kaneland Community Unit District No. 302, 18 Ill.2d 11, 163 N.E.2d 89 (1959).

10. Krutili v. Board of Education, 99 W. Va. 466, 129 S.E. 486 (1925).

11. Freel v. School City of Crawfordsville, 142 Ind. 27, 41 N.E. 312 (1893).

12. Reynolds v. Board of Education, 53 N.Y.S. 75 (1898).

statutory liability of a limited nature only. A statute that makes a school district liable for injuries growing out of transporting pupils to the extent of no more than $10,000 per pupil per accident is an example of such a statute.

Abrogation of School District Immunity in Illinois.--The common law doctrine that school districts are immune from liability was accepted and followed in Illinois with reference to towns and counties as early as the nineteenth century; in 1898, the Supreme Court of the state extended this doctrine to school districts in a landmark case. 13/ In addition to grounding its position on the theory that "the King [state] can do no wrong," the court also took the position that it should discourage the expenditure of tax monies for the payment of government claims and that it should, wherever possible, protect public funds.

Until 1959, Illinois courts followed the common law rule consistently. In that year, however, in the now famous Molitor case, the Supreme Court of Illinois expressly repudiated the doctrine of immunity from tort liability. This decision was handed down in a school bus accident case where 18 pupils were injured. The bus had struck a culvert and caught on fire, causing severe burns to the occupants. The court said:

> As was stated by one court, "The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightment, and in a republic, the medieval absolutions supposed to be implicit in the maxim, 'the King can do no wrong,' should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constituting the government, where it could be borne without hardship upon any individual, and where it justly belongs." ...in preserving the sovereign immunity theory, courts have overlooked the fact that the Revolutionary War was fought to abolish that "divine right of kings" on which the theory is based. 14/

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13. Kinnare v. City of Chicago, 171 Ill.32 (1898).
14. Molitor v. Kaneland Community Unit District No. 302, 18 Ill.2d 11, 163 N.E.2d 89 (1959).

In this same decision the court stated that the payment of damage claims is a proper expenditure of tax money--as proper as the payment of premiums on liability insurance. The court held, therefore, that schools should be and are liable for the negligence of their employees, and it expressly overruled prior decisions to the contrary.

Legislation Affecting Liability.--Following the Molitor decision, considerable legislation in the field of tort liability was enacted. One law indirectly related to liability was enacted as early as 1953. This act carried with it the authorization of school boards to carry liability insurance protecting their employees.

Two years after the Illinois Supreme Court recognized that damages could be recoverable against school districts for injuries occurring as a result of negligence in the conduct of schools, the Illinois General Assembly enacted the Tort Liability of School Districts and Non-profit Private Schools Act (Ill. Rev. Stat., Ch. 122, Sec. 821, et seq.). In establishing public policy, this law specifies in Section 1 that:

> The General Assembly finds and hereby enacts as the public policy of the State of Illinois that public schools in the exercise of purely governmental functions should be protected from excessive diversion of their funds for purposes not directly connected with their statutory functions, if there is liability imposed by any court, and that there should be a reasonable distribution among the members of the public at large of the burden of individual loss from injuries incurred as a result of negligence in the conduct of school district affairs....

Three years later, the Local Governmental and Governmental Employees Tort Immunity Act specifically exempted school districts and their employees from liability for injuries resulting from certain causes (Ill. Rev. Stat., Ch. 85, Sec. 1-101, et seq.). No teacher or board may be held liable for injury caused by adopting or by failing to adopt an enactment or by failing to enforce any law (Sec. 2-103); for failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its own, to determine whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety (Sec. 2-105); for injury caused by an oral promise or misrepresentation of its employee, whether or not such promise or misrepresentation is negligent or intentional (Sec. 2-106); for injury resulting from an act or omission of its employee where the employee is not liable (Sec. 2-109); or for injury caused by the organization, maintenance, or

operation of a school safety patrol, as authorized by Section 10-22.8 of the School Code (Sec. 2-211). This statute also stipulates that public employees are not liable for their acts or omissions in the execution or enforcement of any law unless such acts or omissions constitute willful and wanton negligence (Sec. 2-202).

The Illinois School Code now requires all public school districts to be protected from certain types of lawsuits. Specifically, indemnification or insurance protection is required to protect against civil rights damage claims and suits, constitutional rights damage claims and suits, death and bodily injury and property damage claims and suits, including defense thereof, when damages are sought for negligent or wrongful acts allegedly committed during the scope of employment. This also includes acts committed under the direction of the school board. These statutes also require that such protection from suit shall include any member of the board or any agent, employee, teacher, student teacher, officer or member of the supervisory staff of the school district, or volunteer personnel. No agent may be afforded this indemnification or protection unless he or she is a member of the board, an employee of the board, an authorized volunteer, or a student teacher at the time of the incident from which the claim arises. Not only does this required protection extend to protection against financial loss and expenses, but it also includes reasonable legal fees (Secs. 10-20.20 and 10-22.3). The provision for protection from suit for Chicago employees is provided for in Section 34-18.1, as the School Code was enacted in 1963 and amended in 1971 to include civil rights claims. A careful study of these acts indicates that it affords teachers such security, although it does not deny an injured party the right to sue the district or the teacher who may have been responsible for the injury, either as the result of denying the student's constitutional rights or as the result of negligence or willful and wanton conduct. It provides that, if found guilty and damages are assessed, the teacher will not suffer financial loss. The board or the district must indemnify the teacher. Such a law is frequently referred to as a "save-harmless" law. This name grows out of the wording of some early laws of this type which required school boards or school districts to "save harmless" any teacher against whom a judgment was rendered in a tort liability action. This law, it must be remembered, does not make school districts liable in actions in tort for the negligence of their officers, agents, or employees. Neither does it give to the injured party the right to sue the district. This was established by Molitor and subsequent cases. One other aspect of this law should be noted. It does not protect the teacher against all wrongful acts, but only those committed "in the scope of employment or under the direction of the board." This, of course, means that if the injury complained of grew out of the performance of some errand performed for the teacher by the pupil, and not out of

the official performance of the teacher's duties, the teacher need not be indemnified by the board. The implication of this is clear. Teachers should never ask pupils to run private errands for them unless they are prepared to stand responsible for injuries received by the pupils and by anyone the pupils may injure while they are running the errands.

Liability of School Employees

Introduction.--The Molitor case has no bearing on the question of the personal liability of school employees. To avoid being held personally liable for their acts, teachers must conduct themselves as reasonably prudent persons would under the given circumstances if they are to escape being held liable. There is no limit to the amount of liability which an individual may incur. Consequently, teachers may be sued for acts of battery or malice for an unlimited amount in actions for tort.

Liability for Injury Resulting from the Performance of Disciplinary Acts.--Teachers should be extremely careful to avoid engaging in willful or voluntary acts that may cause injury or damage to a child, because, in such cases, they may be held liable. The use of corporal punishment is a good example of a willful act that may be a cause of injury, and, if it is, it may subject the teacher to liability. It is the general rule, however, that, in the absence of a board policy, regulation, or statute forbidding so doing, a teacher may administer reasonable corporal punishment to a child whose conduct is not in conformity with the approved standards. Illinois courts have routinely held that Sections 24-24 and 34-84a place the teacher in loco parentis in relation to students. With this perspective, courts have generally held, when a teacher is functioning in a supervisory role, that the teacher will not be held liable, as a parent would not be liable, for student injury unless the student alleges and proves willful and wanton conduct on the part of the teacher. Or, stated somewhat differently, in situations where it is desirable to have teachers exercise discretionary judgment, the standard against which their actions or inactions will be gauged is willful and wanton conduct. In situations where it is not desirable to have teachers exercising discretion, such as issuing students ill-fitting or defective athletic equipment, the standard against which the teachers' behavior will be judged is that of ordinary negligence. Teacher behavior in administering reasonable discipline has regularly been viewed as falling within the in loco parentis function, and, therefore, the student who would hold the teacher and/or school district liable for injury received while being disciplined by a teacher bears the burden of

proving willful and wanton conduct. 15/ In addition, if the teacher is not held liable for a discipline-related injury, the school district is not liable. 16/ In a case illustrating these two factors, an Illinois court stated:

> A teacher, standing in loco parentis, has the right to inflict corporal punishment so long as such action is reasonable under the circumstances.... Furthermore, the use of corporal punishment will not give rise to civil liability unless the punishment was actuated by malice or inflicted in a willful and wanton manner. 17/

For these reasons the teacher is permitted to punish the child when the teacher's judgment is that to do so is essential to the improvement of the child's conduct and/or to the welfare of the school. This right to administer corporal punishment is limited to those activities of the teacher undertaken while acting in an official and professional capacity; but the teacher may punish a child for an act committed off school property and not during school hours if the act in question has an adverse effect on the well-being of the school. As long as the teacher acts in good faith and is not motivated by anger or malice or willful and wanton conduct, the courts will, generally, refuse to hold the teacher liable, either criminally or civilly, for punishing a child, even if the pupil is bruised or accidentally injured, especially if it is shown that the punishment was reasonable and adapted to the nature and seriousness of the offense, and to the age, sex, physical condition, and degree of maturity of the child. An Ohio court has provided a clear and concise statement of the right of a teacher to administer corporal punishment and immunity from both civil and criminal responsibility for so doing. It said: 18/

> This case does not present any new, unusual or novel questions of law. Like situations have confronted our courts since schools have existed. Every text book of law contains clear and understandable statements that have application here.

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15. Wexell v. Scott, 2 Ill. App.3d 646, 276 N.E.2d 735 (1971).
16. Woodman v. Litchfield Community School District No. 12, 102 Ill. App.2d 330, 242 N.E.2d 780 (1968).
17. Gordon v. Oak Park School District No. 97, 24 Ill. App.3d 131, 320 N.E.2d 131 (1974).
18. State v. Lutz, 113 N.E.2d 757 (1955).

> Nearly every State has its leading cases on the subject of corporal punishment of a pupil by a teacher....
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> When a teacher gives a pupil corporal punishment and is charged criminally therefor, certain fundamental proposition[s] of law come to mind.
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> First, the teacher stands in loco parentis [underscoring added] (i.e., in the place of a parent), and acts in a quasi judicial capacity and is not liable for an error in judgment in the matter of punishment.
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> .....
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> Third, there is a presumption of correctness of the teacher's actions.
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> Fourth, there is a presumption that the teacher acts in good faith.
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> Fifth, mere excessive or severe punishment on the part of the teacher does not constitute a crime unless it is of such a nature as to produce or threaten lasting or permanent injury, or unless the State has shown that it was administered with either express malice (i.e., spite, hatred or revenge), or implied malice (i.e., a wrongful act wantonly done without just cause or excuse), and beyond a reasonable doubt.
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> Sixth, the defendant teacher is entitled to all the benefits and safeguards of the well-known presumption of innocence.

Another example of a willful or voluntary act that might result in injury is first aid or medical treatment administered to an injured child. While the teacher may not, with impunity, stand idly by and refuse to assist a child who is seriously injured, the teacher must be certain that the assistance rendered is not such as to aggravate injuries already received. While teachers stand in loco parentis to their pupils--i.e., they stand in the place of the parents--they are not clothed with all of the parents' authority. They may not diagnose or treat pupils' ailments, as parents may well do, because if they do and err they may be held liable for injuries resulting therefrom. For example, in Pennsylvania, when two teachers motivated solely by a desire to assist a pupil who had an infected hand, held the child's

hand in water so hot that severe burns resulted, the teachers were held liable on the grounds of negligence. 19/

A similar conclusion of liability was recognized in an Illinois Supreme Court case involving a student assistant trainer treating another student's injury. A certified teacher, who was also the athletic trainer, looked at the injury to a student athlete and directed the student assistant trainer to treat it. The injured student later claimed that he suffered severe and permanent injuries due in part to the treatment he received by the "incompetent and untrained student." The court found this claim under the circumstances sufficient to allege willful and wanton conduct on the part of the school district and declined to recognize an immunity status for the district. 20/

Liability for Injuries Resulting from the Performance of Nonwillful Acts.--Teachers may be held responsible for injuries growing out of nonwillful as well as willful acts. Such injuries are the most difficult to avoid, simply because they are unintentional. They may be thought of as resulting indirectly from some act that is not necessarily overt.

In Illinois, an example of liability arising out of unintentional acts involved a student injury received on school property during a non-school sponsored event. While playing in a "powder-puff" football game which was not authorized by the school board or the administration, a student was knocked down and sustained injuries. The practices leading up to the game were supervised by three teachers but no equipment was provided by anyone connected with the school district for the practice sessions or for the game. In the litigation which followed the event, the board claimed that it held no liability since the game was unauthorized and the school authorities had made an effort to disassociate the school from the game. In holding the board liable, the Illinois Supreme Court addressed the question of whether the teachers who coached the girls involved in the game acted as agents of their employing school board within the course of their employment. The court stated:

> Whether an agent was acting in the course of his employment depends upon the contract between the parties and the nature of the relationship. Each case must depend on its own facts. No one feature of the relationship is determinative, but all must

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19. Guerriere v. Tyson, 147 Pa.Supp. 239, 24 A.2d 468 (1942).

20. O'Brien v. Township High School District No. 214, 83 Ill.2d 262, 415 N.E.2d 1015 (1980).

> be construed together. Moreover, the relationship must exist at the time and in respect to the particular transaction out of which an injury arose. Finally, whether there is expressed authority is a question of fact, but the existence of implied authority from a certain state of facts is a question of law. 21/

Within this framework, this court found the teachers were not expressly authorized by the board to coach the powerpuff football game. The court held, however, that the teachers were acting with "apparent authority," or as individuals who reasonably would appear to be authorized to act as agents of the employing school board. The court found that the facts did not obviate the possibility that the students thought they were engaging in an activity connected with the school program. The practice sessions took place on school property, the girls used the school locker room facilities, the girls played the game on one of the school's athletic fields, and three teachers acted as coaches. In view of these factors, the court stated that "it could appear to a reasonably prudent person that the teachers possessed authority to coach the game."

Finally, while the court did not find that the three teachers acted in a willfully and wantonly negligent manner, it did find that the school district was negligent in not providing effective equipment to the students involved in this game. This reasoning is best described in the words of the court:

> We have previously decided that the teachers were acting with apparent authority; thus whether the game was authorized is not material. We also do not think that, because the defendant did not furnish any equipment to the students, it is absolved from liability for failing to provide effective equipment. Instead, we think a school district has an affirmative duty, where students are engaging in school activities, whether they are extracurricular, or formally authorized as part of the school program, to furnish equipment to prevent serious injuries. At the least, a school district should furnish helmets and face guards for a game such as football, where head injuries are common and severe. Accordingly, we think the

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21. Lynch v. Board of Education of Collinsville Community Unit School District No. 10, 82 Ill.2d 415, N.E.2d 447 (1980).

instant school district was negligent for failing to provide, at the least, helmets and face guards to the students. It is reasonably clear that the manifest weight of the evidence established negligence on the part of the defendant because it did not furnish any protective head gear or face gear to the students although it knew or should have known through its agents that an injury was foreseeable. Moreover, the failure to provide such equipment was a proximate cause of the plaintiff's injury.

Liability for Injuries Received by Pupils While on Field Trips.--The one situation, with respect to liability, that gives teachers major concern is the field trip, or excursion. It behooves teachers to be especially careful when they are supervising such trips. Altogether too often, teachers have the mistaken idea that permission slips signed by parents in which they agree not to hold the school responsible for any injuries received by their children while on the trip give them protection from liability. Such is not the case, however, since the courts take the position that parents or guardians may not waive the right of a minor child to look to the negligent party in case of injury. The potential for student injury in such situations and the question of liability, while of considerable interest to the supervising teacher, has not been frequently litigated in Illinois. In one case involving a field trip to the Field Museum of Natural History, a group of 50 students was divided into two groups, and each group was supervised by one teacher. A 12-year old student wandered away from his group, voluntarily joined a group of non-students who were unsupervised and not connected with the field trip, and was subsequently assaulted and beaten. The court denied his claim of liability for injury on the part of the school district and his teachers by finding the teachers, under the circumstances present, were providing reasonable supervision. No foreseeable unreasonable risk of harm was possible, and the teachers did not willfully or wantonly neglect their supervision responsibilities; therefore, they were not liable for the injuries sustained by the student. 22/

Liability of Non-certified Employees.--Just as the School Code has recognized differences in the functions which may be performed by certified and non-certified personnel, so too has an Illinois court identified differences with respect to the liability of a school district when student injury occurs and supervision is being provided by non-certified per-

22. Mancha v. Field Museum of Natural History, 5 Ill. App.3d 699, 283 N.E.2d 899 (1972).

sonnel. In an instance in which a student was injured in a school's lunchroom, and the adult supervisors were a teacher's aid and a school community representative, the court found, that, since they were not "teachers" under the School Code, the injured student did not have to prove willful and wanton conduct, but merely had to prove ordinary negligence to recover damages. 23/

Liability for Student Injury to Another Student.--There is little doubt that teachers, standing in loco parentis, have the responsibility to maintain discipline in schools (Sec. 24-24). Cases have been brought against teachers and their employing boards claiming this responsibility has been breached when an injury to a student is caused by another student or students whom a teacher was supervising at the time the injury occurred. Two cases illustrate this "student-injuring-another-student" situation, resulting in the teacher and school board being held harmless for any liability. In one instance, a student was threatened by several other students for refusing to make payments of money to them. The threatened student notified her teacher of these threats and identified the leader, who was also in this teacher's class. While accompanying the class to a school bathroom, the teacher remained in the hallway adjacent to the bathroom. The teacher had appointed as monitor the student identified as the leader of the group making the threats. The teacher did not take any action to insure the physical safety of the student who had been threatened while she was in the bathroom and not under the visual supervision of the teacher. While in the bathroom, the student was physically assaulted by her classmates. She sued the teacher and the school board for negligence. The court held that the teacher did not intentionally abandon her duty of supervising the students she was responsible for, that she was standing in place of the parents and was, therefore, immune from liability for ordinary negligence. Also, since the facts of this case did not show the teacher to be guilty of willful and wanton conduct, no liability was recognized. 24/ In another case, a student was attacked and beaten in a school hallway. The student claimed the district negligently failed to provide supervision in the hallway areas to protect students. Again, holding that the injured student could not find the school liable for negligence alone, the court concluded that the student failed to support any allegation of willful and wanton conduct on the part of the school district or any of its employees. 25/

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23. Edmonson v. Board of Education of City of Chicago, 62 Ill. App.3d 211, 379 N.E.2d 27 (1978).
24. Booker v. Chicago Board of Education, 75 Ill. App.3d 381, 394 N.E.2d 452 (1979).
25. Cipolla v. Bloom Township High School District No. 206, 69 Ill. App.3d 434, 388 N.E.2d 31 (1979).

In a case which had the reverse outcome, a student brought suit seeking compensation for damages resulting from battery inflicted by a classmate. A counselor, after being informed of threats having been made, met with both students. During this meeting, the anger of the student making the threats was readily apparent to the counselor, who was also aware that this student had a history of fighting in the school. Although this student remained quite angry at the end of their meeting, the counselor took no steps to keep these students separated and did not notify any of the school's disciplinary personnel of the possible difficulty in order that they might monitor the situation. When the two students met again, the student originally notifying the counselor of the threats was struck in the eye, and surgery was necessary to correct the injury. 26/

The injured student contended that the school's response to the known threat of violence on school premises was inadequate under these circumstances, that her assailant was a known disciplinary problem, that steps should have been taken to guarantee that no altercation would occur, that the school should have taken steps to supervise both students, and that immediate action should have been taken to sequester and discipline the threatening student following the counseling session. From these claims she concluded that the schools' inaction constituted willful and wanton conduct and sued for compensation for the injuries resulting from the battery inflicted.

In holding for the injured student, the court found ample proof that the risk of harm had been brought to the attention of the counselor and that the supervision needed to maintain discipline aimed at avoiding a confrontation between these pupils was not provided. Instead, the two were allowed to proceed to a situation where serious injury resulted. After meeting with the injured student, the counselor, in essence, placed her back into the position she had been in prior to going to the counselor's office. Adequate steps were not taken as they should have been when impending danger had been brought to the attention of one invested with the duty to maintain discipline. The court could not say that such conduct did not demonstrate an "utter indifference to or conscious disregard for" the safety of the injured student and unanimously decided in her favor.

Changing Standards for Determining Liability.--In the 17 years following Molitar, a large number of suits were brought by students seeking damages for physical injury. In many of these cases, the injury was associated with the use of school-

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26. Gammon v. Edwardsville Community Unit School District No. 7, 82 Ill. App.3d 586, 403 N.E.2d 43 (1980).

provided equipment, such as athletic and vocational education program equipment. During this period, the standard for determining liability was "common or ordinary negligence" on the part of school districts or their employees. This standard was, in part, substantially changed in 1976 as a result of the Kobylanski ruling by the Illinois Supreme Court. In this case two female students in different public school physical education classes sustained spinal injuries. A 13-year-old student was injured when she fell while attempting to perform a knee hang on steel rings suspended from the ceiling of the gymnasium, and a 15-year-old student was injured while performing a front drop on a trampoline. The common issue raised was whether the teachers and school districts involved in the two incidents could be held liable for injuries to students resulting from their allegedly negligent conduct, or whether the greater burden of willful and wanton conduct must be proved. 27/

Applying Sections 24-24 and 34-84a of the School Code, the court found these statutes confer upon educators the status of parents or guardians in relation to students. The relevant part of the two statutes, which are identical in language, provides:

> Teachers and other certified educational employees shall maintain discipline in the schools. In all matters relating to the discipline in and conduct of the schools and the school children, they stand in the relation of parents and guardians to the pupils. This relationship shall extend to all activities connected with the school program and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents or guardians.

It was agreed that parents would not be considered liable for injuries to their children in the absence of willful and wanton conduct. Both injured students claimed, however, that these portions of the School Code conferred the in loco parentis status upon teachers only as applied in disciplinary situations and not to their status related to the injury situations, which arose from non-disciplinary matters.

The Illinois Supreme Court reasoned that the statutes were intended to confer in loco parentis status on certified personnel in disciplinary as well as non-disciplinary matters.

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27. Kobylanski v. Chicago Board of Education, and Chilton v. Cook County School District No. 207, 63 Ill.2d 165, 347 N.E.2d 705 (1976).

In addition, these statutes and this teacher status apply to all activities in the school program, and since the physical education classes in which the two injuries occurred were a required part of the academic curriculum, the classes were clearly activities connected with the school program. Therefore, teachers, "... standing in loco parentis [underscoring added], should not be subject to any greater liability than parents, who are liable to their children for willful and wanton misconduct, but not for mere negligence." Thus, Kobylanski established the willful and wanton conduct standard for certified employees of school districts as the charge which the injured student must support. Fundamentally, this standard would require the student to show that the certified employee's behavior was intentional or, under a specific set of facts and circumstances, showed a "reckless disregard" for the safety of others. Compared to the prior standard of ordinary negligence, a charge of willful and wanton conduct is more difficult to support.

As significant as Kobylanski was in clarifying the appropriate willful and wanton conduct standard to be applied to schools, so was Gerrity in both retaining this standard and, at the same time, returning schools to the older standard of mere negligence. The axis on which the proper standard was to turn was the court's view of the teacher-student relationship which existed at the time of the injury. The reasoning in the Gerrity case is significant for understanding the current state of school district liability in Illinois.[28]

A 15-year-old high school student suffered severe injuries while making a tackle during a junior varsity football game. Following the incident, a personal injury action was brought against the school district and several other parties not connected with the district. In part, the charges were based on the claim that the district carelessly and negligently: (1) permitted and allowed Gerrity to wear an ill-fitting and inadequate football helmet; (2) refused to furnish adequate and proper football equipment upon Gerrity's request; and (3) furnished and provided Gerrity with an ill-fitting and inadequate helmet when it knew or, in the exercise of ordinary care, should have known the helmet was liable and likely to cause him injury.

This claim led to the district's being charged with ordinary negligence in furnishing Gerrity with an ill-fitting and inadequate piece of equipment, the football helmet. The district argued that the student could not recover damages "... unless he alleged and proved willful and wanton conduct on the part of school personnel."

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28. Gerrity v. Beatty, 71 Ill.2d 47, 373 N.E.2d 1323 (1978).

In resolving these questions, the Illinois Supreme Court opinion held that the three charges given above did not bring this case under "the intended scope" of Sections 24-24 and 34-84a of the School Code. Therefore, the willful and wanton conduct standard established by these statutes, and applied by the same court in Kobylanski, was not viewed as a controlling decision. Kobylanski involved an alleged failure to provide proper supervision and instruction over physical activities of students in physical education classes. This was viewed as being a direct student-teacher relationship involving "... the exercise of a teacher's personal supervision and control over the conduct or physical movement of the student." Kobylanski was, therefore, considered to be under Sections 24-24 and 34-84a of the School Code. Gerrity, however, dealt with what the court considered to be a separate function, that of furnishing equipment claimed to be inadequate, ill-fitting, and defective. This did not have a relationship of a teacher supervising and controlling the conduct of students. The furnishing of equipment was viewed as a separate function which, in the exercise of ordinary care, should have been recognized as likely to cause injury. In so stating, the court held that the charge brought against the district on the grounds of negligence, and not willful and wanton conduct, was appropriate, and the district was not immune from this suit. In the words of the court, "... public policy considerations argue rather strongly against any interpretation which would relax a school district's obligation to insure that equipment provided for students in connection with activities of this type (playing in a football game) is fit for the purpose." In the court's view, holding school districts to the duty of ordinary care in such matters would not be unduly burdensome and would not be inconsistent with the intended purposes of Sections 24-24 and 34-84a of the School Code.

To this point, the combined rulings in Kobylanski and Gerrity by the Illinois Supreme Court would generally indicate that the tort liability standard against which schools would be gauged was actually two standards. In Gerrity, when the separate, nonsupervisory function of furnishing equipment factor was present, the appropriate standard was mere negligence. In Kobylanski, when the teacher was personally supervising and controlling the conduct or physical movement of the students, the appropriate standard was the more difficult to prove willful and wanton conduct. In each of these instances, the court applied the respective standard in determining the liability of the school district. In 1978, the questions arose in Thomas as to whether, when equipment was being furnished, the individual teacher as well as the school board might be held liable.

Thomas was injured in a varsity football game. In his claim for damages against both the school board and the three high school coaches involved, he charged that: (1) the

coaches failed to warn him and other members of the team, who were trained in a similar manner, that they could be seriously injured; (2) the coaches had not been educated and trained properly and that the training program and practice facilities provided to team members were inadequate; and (3) the equipment, being the helmet, face mask, padding, and clothing, was "improperly designed, obsolete, worn, defective and dangerous" and that the equipment had not been inspected and tested properly prior to his injury. Relying upon Sections 24-24 and 34-84a of the School Code, he based his claim against the board and his three coaches on the standard of negligence in furnishing defective and inadequate equipment. Unlike the Gerrity argument, which was brought only against the board, Thomas included the coaches, who were employees or agents of the board, as individual defendants in the suit. 29/

The Illinois Supreme Court refused to extend the opinion in Gerrity to individual teachers and coaches and make them "... personally liable for failure to exercise ordinary care in the course of furnishing equipment to students." Three considerations were given by the Supreme Court in support of this statement. First, the district purchases equipment, which is furnished to students. The authority to purchase and furnish is not shared by the coaches. Coaches have the "... distinct competence or authority to supervise the students and their use of that equipment." In addition, in the court's view, "in practice we believe it would be difficult to beneficially and intelligently distinguish inspecting equipment from supervising students and their use of it." Second, following the reasoning developed in Kobylanski, teachers stand in loco parentis and, like parents and guardians, are immune for mere negligent actions. Public policy considerations of keeping harmony in the student-teacher relationship indicate litigation between students and teachers should not be encouraged absent willful and wanton conduct. Finally, and again phrased in terms of public policy considerations, the court felt that if it were to:

> ... place the duty of ordinary care [while furnishing equipment] on teachers, we would burden them to the extent that a teacher might become immobile in the performance of his obligations. They would not be free and unhampered in the discharge of their duties, since they would live in fear that each judgment they made would bring a lawsuit.... Moreover, a proliferation of such actions for negligence would drain teachers'

29. Thomas v. Chicago Board of Education, 77 Ill.2d 165, 395 N.E.2d 538 (1979).

> time, encourage second-guessing teachers' judgment by courts, and quite possibly discourage persons from the career of teaching.

For these basic reasons, the court held that, in the absence of willful and wanton conduct in the course of their student supervision authority, which in Thomas did include inspecting and supplying students with equipment, teachers and coaches as individuals are immune under Sections 24-24 and 34-84a of the School Code.

Liability for Defamation.--Teachers may also be held liable for defamation. The very nature of teaching and administration requires teachers and administrators to make both objective and subjective evaluations of pupils and to report these to authorized persons and institutions. Unfavorable comments and judgments may lead to suits for defamation of character. Such action can be based upon oral statements (slander) or written information (libel). Action is based upon damage to a person's reputation in the eyes of others. Some teachers believe that if the information about a pupil is true, they have an adequate defense against any lawsuits. A constitutional provision, however, states, "All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense." 30/ From this it is to be noticed that truth, alone, is no defense. To be free from liability, the person who is charged with defamation not only must have stated the truth but also must have acted with good motives. Teachers, however, receive some protection because statements made by them, regarding pupils, other teachers, and administrators, when in the line of duty, are privileged statements and the makers thereof are free of liability.

Teachers should not assume that they hold an automatic legal recourse against their employing board or administration in every instance of possible defamation. Illinois courts, with some exceptions, have generally held that, when defamatory remarks are made in either an open or a closed meeting by an administrator about a teacher, the administrator's statements are immune from liability when the administrator is acting under a duty to evaluate the teacher. If, however, the administrator's statements are malicious, deliberately intended to harm the teacher, and not made in the scope of the administrator's employment, the immunity doc-

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30. Constitution of the State of Illinois, 1970, Art. 1, Sec. 4

trine may not apply, and the teacher could hold the administrator liable. 31/ An Illinois court has also held that statements made by a superintendent at an executive session of a board meeting were absolutely privileged and did not provide a basis for liability. 32/

Liability for Violating Civil Rights Act.--Only recently have actions for damages under the Civil Rights Act been brought against teachers and administrators in any great number. Such cases appear to be on the increase and, undoubtedly, constitute a fertile field for litigation in the future. The Civil Rights Act of 1871 (42 U.S.C., Sec. 1983) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress.

Although there have been insufficient cases involving the judicial interpretations of this act to warrant drawing firm conclusions or abstracting principles of law, it seems clear that teachers, administrators, or boards who subject a teacher or a pupil to the deprivation of rights guaranteed by the U.S. Constitution are liable for damages. Whether the common law rule of immunity is applicable in such cases is a question that has been frequently raised.

In addition to the prohibited discrimination practices contained in federal statutes and the School Code and described in various sections herein, a broadly expressed Illinois statute identifies several bases for illegal discrimination. The Illinois Human Rights Act, 33/ which became effective in 1980, prohibits discrimination against individuals on the basis of race, color, religion, sex, national

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31. Hoffman v. Yack, 57 Ill. App.3d 744, 373 N.E.2d 486 (1978).

32. McLaughlin v. Tilendis, 115 Ill. App.2d 148, 253 N.E.2d 85 (1969).

33. For all practical purposes, the Illinois Human Rights Act replaces the Illinois Fair Employment Practices Act (Ill. Rev. Stat., Ch. 48, Sec. 851, et seq.). Therefore, cases which would have been litigated under the old law will now be litigated under the Illinois Human Rights Act and originally adjudicated by the Illinois Human Rights Commission.

origin, ancestry, age, marital status, physical or mental handicap, and unfavorable discharge from military service (Ill. Rev. Stat., Ch. 68, Sec. 1-101, et seq.). This law specifies these factors as possible discriminatory classifications in connection with a school district's action involving recruitment, hiring, selection for training or apprenticeship, discharge, discipline, tenure, and terms or conditions of employment decisions. Under the provisions of this law, awards covering the actual damages an individual may have suffered at the hands of a school board found to be discriminating on the basis of any of these 10 classifications, along with attorney fees and costs, are possible. The Act does allow for some exceptions, such as a bona fide occupational qualification, which may be required by the board in hiring or appointing a teacher to fill a certain position.

Not all apparent differences in the treatment of teachers according to a classification specifically recognized in civil rights laws are discriminatory under law. For example, teachers may be assigned to specific attendance centers within a district to achieve racial balance. It is not uncommon, when a school district is under a judicially ordered desegregation program, for courts to direct a local board to achieve a racial balance in the faculty assigned to each attendance center. 34/ Similarly, differential treatment of teachers based on sex may or may not be discriminatory. In the case of a school board's refusing to hire a qualified teacher for the sole reason that the board "preferred" a teacher of the opposite sex, and the sex of the teacher was not related to the job duties, such an action was found to be an unfair employment practice. 35/ In another case, however, it was recognized that a tenured male teacher did not hold a legal right, in a reduction-in-force situation, to claim the position of a less senior female teacher. The position required the female teacher to supervise a girls' locker room during times when female students would be changing clothes and showering. Under this condition, the sex of the teacher was considered a bona fide occupational qualification for the teaching position and not a case of sex discrimination. 36/

In a Wisconsin case brought by teachers whose contracts had not been renewed, in which they sought damages and an order compelling reinstatement, the school board, the indi-

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34. Legg v. Illinois Fair Employment Practices Commission, 28 Ill. App.3d 932, 329 N.E.2d 486 (1975).

35. School District 175, St. Clair County v. Illinois Fair Employment Practices Commission, 57 Ill. App.3d 979, 373 N.E.2d 447 (1978).

36. McLain v. Board of Education of Georgetown Community Unit School District No. 3, 66 Ill. App.3d 1024, 384 N.E.2d 540 (1978).

vidual members of the board, and the administrator of the district were named defendants. 37/ Faced with the question of common law immunity, the court said:

> The purpose of common law immunity enjoyed by the judiciary and legislature, here sought to be extended to school boards and administrators, is to preserve the integrity and the independence of those bodies, and to insure that judges and legislators will act on their free, unbiased convictions, uninfluenced by any apprehensions of consequences.... Such considerations do not support granting immunity to school boards and administrators against actions seeking the type of equitable relief reflected in an order of reinstatement.

In taking this position, the court relied rather heavily on an Illinois case decided a few years previously by the Court of Appeals of the Seventh Circuit. 38/ This was an action for damages only which was brought by two probationary teachers, one who had been dismissed and the other who had failed to be reappointed. It was brought against the superintendent of schools, the school district, and the members of the board of the district. The plaintiffs contended that the board's action was based on the association of the teachers with a teachers' union and their activities in its behalf. The board moved to dismiss on the grounds that it enjoyed immunity under both Illinois statutes and common law. Rejecting this, the court stated that the defendants retained only a "qualified immunity, based on good faith action," and to hold that they were "immune from this type of suit would frustrate the very purpose of [the Civil Rights Act]...." With respect to whether the defendants were protected by the Illinois Tort Immunity Act, the court said, "That statute cannot protect defendants against a cause of action grounded, as here, on a federal statute," since, as stated, their immunity is dependent on "good faith action."

Liability of Board Members.--The courts have consistently held that actions taken within the scope of a board's authority will not result in creating liability for individual board members. Even if the general rule just stated were not followed and a court allowed recovery against individual board members, the statute in Illinois requires that the district insure members against losses resulting from the negligent acts of the board (Secs. 10-20.20 and 10-22.3).

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37. Gouge v. Joint School District, 310 F.Supp. 984 (1970).
38. McLaughlin v. Tilendis, 398 F.2d 287 (1968).

A typical defense argued by a board facing a suit which alleges a violation of an individual's legal rights is that the board has qualified immunity. This qualification is commonly based on the claim that the board's action was taken in good faith, that the action was taken in the belief that the act was proper, and that the right violated was not basically established and recognized in law. 39/ This defense may not be sufficient in future years, inasmuch as the U.S. Supreme Court has already rejected such an argument against a public body by a public employee. 40/

Protection Against Liability

Probably the best protection teachers have against liability is a knowledge of the law. If teachers understand what a tort is and the meaning of "negligence" and "willful and wanton conduct," they are less likely to be in positions where liability may result.

In addition to a knowledge of the law, teachers should protect against liability by carrying liability insurance. As mentioned earlier, the school board is authorized to insure its teachers and others to protect them against judgments for wrongful acts and civil rights claims. It must not be forgotten that this gives a teacher no protection unless the act complained of was performed within the scope of his or her duties. In addition, many thousands of teachers--those who are members of the Illinois Education Association or the Illinois Federation of Teachers--already receive liability insurance as part of a package of benefits when they pay their dues. At this time, which is characterized by an increasing number of actions for damages being brought by injured parties, teachers cannot afford to be without adequate insurance coverage.

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39. Hostrop v. Board of Trustees of Junior College District No. 515, 523 F.2d 569 (1975).
40. Owen v. City of Independence, Missouri, 100 S.Ct. 1398, 445 U.S. 622 (1980).

CHAPTER XI

Miscellaneous Statutory Responsibilities, Rights, and Limitations of Teachers

"It is clear that . . . [teachers] have the right under our law to assemble, speak, think and believe as they will. . . . It is equally clear that they have no right to work for the state in the school system on their own terms. . . . They may work for the school system upon the reasonable terms laid down by the proper authorities. . . . If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere."—*Adler* v. *Board of Education*, 342 U.S. 485 (1952).

Introduction

As professional people, teachers should have a basic understanding of their legal status as teachers. Even experienced teachers and administrators sometimes lack this understanding. Either others have not informed them, or they have not informed themselves. They are usually aware of their rights under tenure law in a general way, and they are reasonably well informed respecting the statutes covering certification and retirement. Even in these areas, they many times rely on hearsay rather than real knowledge. But, they are often blissfully ignorant of most other legal aspects of their status. Perhaps an important reason for this lack of information is that, in addition to other statutes, those regarding teachers' rights, duties, responsibilities, and limitations are somewhat scattered throughout The School Code of Illinois.

Some Statutory Responsibilities of Teachers

Teachers should know that, to avoid dismissal, they must not be incompetent, negligent in the performance of their duties, cruel to pupils, or guilty of immoral conduct (Sec. 10-22.4). They should be aware that they must possess valid teaching certificates before undertaking the professional aspects of teaching, and they should know that they cannot legally be paid until their certificates are properly registered with their regional superintendent of schools (Sec. 21-14). They must, in addition, file with their superintendents, or their regional superintendent of schools, transcripts of any additional work completed in institutions of higher learning (Sec. 24-23).

Another professional duty incumbent upon teachers is to show evidence of professional growth (Sec. 24-5). The lack of a precise definition of this term has proved troublesome, but it is fair to state that teachers are required to demonstrate some minimum evidence of professional growth to avoid revocation or suspension of their certificates (Sec. 21-23). Following a 1961 Illinois Supreme Court case, it was established that boards of education may withhold salary increments from teachers who have not met board regulations that require a periodic accumulation of additional college credits. This view was held even though the teacher in question was on tenure and held a master's degree and a life high school

teaching certificate. 1/ Other jurisdictions have also ruled in this way.

Teachers are required by Illinois law to show evidence of physical fitness (Sec. 24-5).

Teachers are also required to attend teacher institutes or risk a pro rata deduction in salary for absenteeism (Sec. 24-3). They may be required to perform extracurricular duties, even though these are not enumerated in their original contracts. A New York decision is worthy of note in this connection, since it made some very specific comments on this matter. It said, quoting in part from a statement made by the acting commissioner of education in an earlier case:

> ... The hours of service of its teachers may not necessarily coincide with the hours of classroom instruction, nor is it legally required that the hours fixed be the same for all teachers....
>
> ... The broad grant of authority to fix "duties" of teachers is not restricted to classroom instruction. Any teaching duty within the scope of the license held by a teacher may properly be imposed. The day in which the concept was held that teaching duty was limited to classroom instruction has long since passed. Children are being trained for citizenship and the inspiration and leadership in such training is the teacher. Of course, it is recognized that any bylaw of a board outlining teachers' duties must stand the test of reasonableness.... Teachers in the fields of English and Social Studies and undoubtedly in other areas may be expected to coach plays; physical training teachers may be required to coach both intramural and inter-school athletic teams; teachers may be assigned to supervise educational trips.... A board is not required to pay additional compensation for such services. The duty assigned must be within the scope of the teacher's duties. Teachers may not be required, for instance, to perform janitorial service, police service (traffic duty), school bus driving service, etc. These are not "teaching duties".... Where the service is not part of the duties of the teacher, there is nothing to prevent the board from arranging for such extra services and paying for the same in its discre-

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1. Richards v. Board of Education, 21 Ill.2d 104, 171 N.E.2d 37 (1961).

> tion.... There are some activities that are part of instruction but, by their very nature, may be performed after the close of the regular school session.... 2/

The most significant case in Illinois dealing with teachers' implied contractual obligations and extracurricular assignments upheld this reasoning. In contesting the assignment of extracurricular duties such as riding pep buses, supervising Saturday afternoon football games and Friday night basketball games, and supervising evening activities such as vocal programs, the teachers contended the assignments violated the School Code provision prohibiting a board from requiring teachers to teach on Saturdays or legal school holidays (Sec. 24-2). In the court's view, extracurricular duties were not "teaching" assignments as intended in the language of the School Code and upheld the board's authority to impose these duties. The court observed that the assignments the teachers objected to were not "onerous in nature or unreasonably time consuming ... not demeaning to the professional stature of the teacher and there is no evidence that such assignments were made in a discriminatory manner." Since these duties were viewed as "necessary adjuncts to normal school activities," they were considered to be within the discretion of school authorities to require as part of a teacher's duties. 3/

The greatly increased activity in the area of formal contracts between boards of education and teachers' organizations has resulted in boards' paying for many of these activities. However, this has not changed the basic law. An incidental professional obligation laid upon Illinois teachers is that they must perform the duties of their contracts themselves and may not employ substitute teachers. 4/ Substitute teachers must be employed by boards of education through their administrative officers. A teaching duty specified by law states that "every teacher shall see that the property of the district under his care and control is not unnecessarily damaged or destroyed" (Sec. 24-17). Another injunction to teachers requires them to keep daily attendance records (Sec. 24-18). They are further required to give assistance and furnish information to truant officers in the reporting of pupils' absences (Sec. 26-9). The statutes specifically require that teachers file reports and schedules. Failure to

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2. Parrish et al. v. Moss et al., 106 N.Y.S.2d 577 (1952).
3. District No. 300 Education Association v. Board of Education of Dundee Community Unit School District No. 300, 31 Ill. App.3d 550, 334 N.E.2d 165 (1975).
4. School Directors v. Hudson, 88 Ill. 563 (1878).

meet this requirement could result in a delay of salary payments, since boards of education are not legally permitted to pay salaries out of public funds unless reports which they must approve and certify are first completed (Secs. 24-18 and 24-19).

Teaching students what their patriotic duties are and how to perform them, as well as commemorating certain officially designated days, is also a part of teaching duties. In all public schools in the state, instruction is required in patriotism, the principles of representative government, the proper use of the flag, voting by using the Australian ballot system (Sec. 27-3), and history of the United States, including a study of the role and contribution of Blacks and other ethnic groups (Sec. 27-21). The schools must also offer instruction in the nature and effect of alcoholic drinks and narcotics (Sec. 27-10); honesty, kindness, justice, and moral courage (Sec. 27-12); consumer education (Sec. 27-12.1); and conservation of natural resources (Sec. 27-13.1).

In addition to this mandatory legislation specifying areas to be taught, the School Code also enumerates a number of days or other periods of time for special commemoration, which teachers may observe. These include Arbor and Bird Day (Sec. 27-18), Leif Erickson Day (Sec. 27-19), American Indian Day (Sec. 27-20), and Illinois Law Week (Sec. 27-20.1). The School Code provides for commemorative holidays that shall be observed, designating January 15, the birth of Dr. Martin Luther King, and February 15, the birthday of Susan B. Anthony, as two such days. Commemorative holidays are regular school days devoted to the commemoration of specific patriotic, civic, cultural, or historic persons or occasions (Sec. 24-2).

These are, of course, the official holidays when school may not be held. The School Code specifically designates Saturdays (Sundays are not mentioned), New Year's Day, Lincoln's birthday, Good Friday, Memorial Day, (the day designated by federal law), Independence Day, Labor Day (the first Monday in September), Columbus Day (the second Monday in October), Veteran's Day, Thanksgiving Day, and Christmas Day. However, the school district must schedule an annual calendar which provides for a minimum of 185 days to insure 176 days of pupil attendance (Sec. 10-19). Official holidays may only expand the time between the opening and closing of school. In effect, adding holidays does not reduce the work obligation of teachers.

Statutory Rights of Teachers

The School Code of Illinois forbids school boards, in setting salaries of certificated employees, to make any dis-

crimination on account of sex, color, race, nationality, religion, or religious affiliation (Secs. 24-4 and 24-7).

A minimum salary law requires that no less than minimum salaries be paid to full-time teachers. The statute (Sec. 24-8) currently provides that full-time teachers, with various levels of training, shall receive at least the minimum salaries as indicated:

1. Teachers with less than a bachelor's degree . . . . . $ 9,000
2. Teachers with 120 semester hours or more and a bachelor's degree $10,000
3. Teachers with 150 semester hours or more and a master's degree $11,000

Furthermore, the same statute provides that, based upon years of service or experience in the district, teachers shall receive salary increments which are at least the following:

1. Teachers with less than a bachelor's degree after 5 years of experience . . . . $ 750
2. Teachers with a bachelor's degree: 120 semester hours or more and:
   a. after 5 years of experience . . . . . $ 1,000
   b. after 8 years of experience . . . . . $ 1,600
3. Teachers with 150 semester hours or more and a master's degree:
   a. after 5 years of experience . . . . . $ 1,250
   b. after 8 years of experience . . . . . $ 2,000
   c. after 13 years of experience . . . . . $ 2,750

Thus, the salaries specified are minimum salaries only, and they may be greater than but no less than the amounts mentioned in the statute. This statute, then, may be thought of as establishing a floor but not a ceiling on teachers' salaries. In addition, it prescribes minimum increments based on experience in the district. These minimums are subject to change by the legislature during any future sessions of the General Assembly.

Each teacher in a building with two or more teachers is entitled to a duty-free lunch period equal to the regular school lunch period but not less than 30 minutes in length (Sec. 24-9). This provision is applicable to teachers whose duties require attendance at a school for four or more clock hours in any school day.

With regard to the payment of teachers' salaries, school boards are required to make at least one payment during each month (Sec. 24-21). Nothing in the law determines the maximum number of payments that may be paid. As early as 1873, an Illinois Supreme Court decision held that the reorganization of a school district could not act to impair the obligation of school trustees to pay a salary to a teacher who had already fulfilled the services called for in the contract issued by the "old" board. Thus, if the indebtedness of the old district was not assumed by the new district, the old district had to remain in existence long enough to discharge its obligations to its teachers. 5/

A board of education which lacks funds to pay teachers' salaries is still required to issue orders on the school account for these amounts. The treasurer, in turn, is required to endorse the orders as evidence that they were not paid for lack of funds and to give the teachers notice as soon as funds become available. These orders bear interest at the rate of 6 percent per annum. The treasurer must pay these orders as soon as sufficient funds become available and may not use these funds to pay any other orders until the teachers' orders are paid (Sec. 8-16). The question of priority in the payment of teachers' salaries was thoroughly argued in a relatively old Supreme Court case. Here the board of education refused to issue an order to the township treasurer for a teacher's back salary. The board, which had already issued anticipation warrants, feared that the issuance of further orders would endanger their marketability. The court held, in part, as follows: "... boards of education cannot ... refuse to issue ... orders [for teachers' wages] because by ... legislation such orders ... [are made the] medium for the payment of taxes levied for educational purposes." 6/ For details of deficit financing, see Chapter XII. Boards of education probably should not issue teachers' orders which cause the total indebtedness of the district to exceed the maximum indebtedness described in Chapter XII. Since the debt limit is a statutory limit (Sec. 19-1), this maximum may be challenged in the future, as it has been in the past. The School Code provides that "they [boards] shall

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5. Rogers v. People, 68 Ill. 154 (1873).
6. People v. Board of Education, 349 Ill. 291, 182 N.E. 383 (1932).

pay the wages of teachers monthly, subject, however, to the provision of Section 24-21." Teachers orders were issued by some school districts in excess of the 5 percent constitutional limit prior to the repeal of this limit in the 1970 constitution.

Other teacher rights involving the payment of salaries are those requiring the payment of salary even though the teachers are prevented from performing the contractual services required. In one instance, a school board was required to pay the contracted salary even though the school house burned down and school was dismissed. 7/ A more complete and specific ruling was written by the Illinois Supreme Court in the case of a closed school because of an influenza epidemic. The court said:

> ... where performance of the contract is rendered impossible by an act of God or by the public enemy, the district is relieved from liability, but where the school is closed on account of a contagious disease, or destruction of the school building by fire, and the teacher is ready and willing to continue his duties under the contract, no deduction can be made from salary for the time the school is closed.... 8/

Payroll deduction is authorized in a statute which specifically permits school boards--and other local governmental agencies--to withhold from compensation of their employees money for items such as membership dues to professional organizations; union dues; group health, accident, hospital, and medical insurance premiums; money for the purchase of United States savings bonds; and United Fund contributions (Ch. 85, Sec. 472-477), when requested to do so. Section 10-22.3a specifically provides for insurance, the premium for which the board may pay for or deduct.

Illinois teachers have a statutory right to 10 teaching days of sick leave per year. This leave is cumulative up to a minimum of 90 days of full pay. Boards may grant more than the statutory minimum per year and may permit a larger accumulation. Sick leave is interpreted to mean personal illness, quarantine at home, or serious illness or death in the immediate family or household (Sec. 24-6).

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7. Corn v. Board of Education, 39 Ill. App. 446 (1891).
8. Phelps v. School District No. 9, 302 Ill. 193, 134 N.E. 312 (1922).

Boards of education are permitted by law to participate in provisions for insurance protection and benefits for their employees in such types and amounts as the boards may determine. Payroll deductions for such payments are also authorized (Sec. 10-22.3a). It is mandatory for a board of education to insure members of the board, employees, volunteer personnel, and student teachers against financial loss by reason of alleged negligence or wrongful act, provided they were performing duties within the scope of their responsibilities. Such insurance includes payment for the costs of legal fees and costs arising out of any claim, demand, suit, or judgment (Sec. 10-20.20). In addition, boards of education are required to insure the same persons against loss by reason of civil rights damage claims and suits, constitutional rights damage claims and death and bodily injury and property damage claims and suits, when the injury complained of is committed in the scope of employment (Sec. 10-22.3).

The state tenure law in the section outlining causes for dismissal of teachers says, "Marriage is not a cause of removal," and "Temporary mental or physical incapacity to perform teaching duties, as found by a medical examination, is not a cause for dismissal" (Sec. 10-22.4).

The School Code specifically recognizes many civil rights held by teachers. Discrimination on the basis of color, race, sex, nationality, religion, or religious affiliation is prohibited in the employment of teachers, both as a qualification and as a disqualification, and in their assignment to any office, position, or school in a district (Sec. 24-4). In fixing salaries of all certified employees, boards of education shall make no discrimination on account of sex (Sec. 24-7). As previously indicated, at least indirectly, teachers have the right to marry. The right of teachers to hold union membership has now become commonly recognized, and the discharge of a teacher for union membership is illegal. Other civil rights may be inferred from case law and common practice.

Illinois courts have long recognized the authority of a board of education to enter into a collective bargaining agreement with an organization selected by and representing the district's teachers. This recognition also extends to exclusive representation of all teachers by one bargaining organization. School boards were viewed, prior to the enactment of Public Act 82-107 (1981), as holding the power to engage in collective bargaining, and to conclude a master contract with an exclusive bargaining agent, as an implied power granted by the legislation authorizing boards to enter into

contracts and to do all things "necessary and proper" for the operation of a school district. 9/

On August 1, 1981, the governor signed Public Act 82-107. This law establishes that any board of education in Illinois has the option of recognizing or not recognizing a labor organization for collective bargaining purposes, if that organization appears to represent the greatest number of employees. Regional superintendents of schools are charged with the responsibility of directing the election which determines an exclusive bargaining unit. Bargaining units must contain employees with an identifiable community of interests, and no unit may include both professional and nonprofessional employees unless a majority of the employees in each group vote for inclusion in the bargaining unit (Sec. 3-14.24). In an election to gain recognition as an exclusive bargaining representative of the employees in a unit, the organization or the employer may file petitions requesting the election with the appropriate regional superintendent of schools. Such petitions may be filed:

A. ... by an employee or group of employees of any labor organization acting on their behalf alleging and presenting evidence that 30% or more of the employees in a bargaining unit wish to be represented for collective bargaining or that the labor organization which has been acting as the exclusive bargaining representative is no longer representative of a majority of the employees in the unit; or

B. ... by an employer alleging that one or more labor organizations have presented a claim to be recognized as an exclusive bargaining representative of a majority of the employees in an appropriate unit or that it doubts the majority status of an exclusive bargaining representative.

Public Act 82-107 further provides that:

> The regional superintendent shall investigate the petition and if he has reasonable cause to suspect that a question of representation exists,

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9. Chicago Division of the Illinois Education Association v. Board of Education of the City of Chicago, 76 Ill. App. 2d 456, 222 N.E.2d 243 (1966).

he shall give notice and conduct a hearing. If he finds upon the record of the hearing that a question of representation exists, he shall direct an election. Nothing prohibits the waiving of hearings by the parties and the conduct of consent elections.

No election may be conducted in any bargaining unit during the term of a collective bargaining agreement covering such unit or subdivision thereof, except the regional superintendent may direct an election after the filing of a petition between January 15 and February 15 of the final year of a collective bargaining agreement. No election may be conducted in a bargaining unit, or subdivision thereof, in which a valid election has been held within the preceding 12 month period.

Elections shall be by secret ballot. The regional superintendent may establish rules and regulations for the conduct of elections. Only labor organizations supported by 15% or more of the employees in the bargaining unit are eligible for placement on the ballot. The ballot must include, as one of the alternatives, the choice of "no representative." No mail ballots are permitted except where a specific individual would otherwise be unable to cast a ballot.

The labor organization receiving a majority of the ballots cast shall be certified by the regional superintendent as the exclusive bargaining representative. If the choice of "no representative" receives a majority, the employer shall not recognize any exclusive bargaining representative for at least 12 months. If none of the choices on the ballot receives a majority, a runoff shall be conducted between the 2 choices receiving the largest number of valid votes cast in the election. The regional superintendent shall certify the results of the election within 5 working days after the final tally of votes unless a charge is filed by a party that improper conduct occurred which affected the outcome of the election. The regional superintendent shall promptly investigate the allegations, and if he finds probable cause that improper conduct occurred and could have affected the outcome of the election, he shall set a hearing on the matter on a date falling within 2 weeks of when he received the charge. If he determines, after [the] hearing, that the outcome of the election was affected by improper conduct, he shall order a new election.

> If he determines upon investigation or after [the] hearing that the alleged improper conduct did not take place or that it did not affect the results of the election, he shall immediately certify the election results.
>
> Any labor organization that is the exclusive bargaining representative in an appropriate unit on the effective date of this amendatory Act shall continue as such until a new one is selected under this Section.

Two sections of Public Act 82-107 deal with non-election aspects of collective bargaining in Illinois public schools. School boards may, under this law, enter into agreements with employees or representatives of employees to resolve disputes and grievances by binding arbitration before disinterested third parties (Sec. 10-22.4a). The submission of a dispute or grievance to binding arbitration, when this procedure existed prior to the enactment of Public Act 82-107, has typically been included as a provision in a collective bargaining master contract. The most common master contract language usually provides that the teachers and board representatives mutually agree on a disinterested third party who will serve as an arbitrator of the dispute or grievance. This third party is granted the authority to make a decision concerning the dispute or grievance which both parties have agreed, in advance, to accept as binding. Binding arbitration, while resolving most issues, may not always solve a problem permanently at the local district level. It is not uncommon to find the same issue being raised at a future bargaining session or to find the arbitrator's ruling being challenged in the courts.

Another provision of Public Act 82-107 allows a local board of education to enter into an "agency shop" agreement with the employees' representative organization. An agency shop provision in a master contract commonly requires employees who are not members of the bargaining unit, but who enjoy the benefits achieved by the unit in collective bargaining efforts, to pay to the bargaining unit a fee which is typically an amount equivalent to the dues assessed a member of the unit. This new law provides, in Section 10-22.40a, that:

> Where a collective bargaining agreement is entered into with an employee representative organization, the school board may include in the agreement a provision requiring employees covered by the agreement who are not members of the representative organization to pay their proportionate share of the cost of the collective bargaining process and con-

> tract administration, measured by the amount of dues uniformly required by members. In such case, proportionate share payments shall be deducted by the board from the earnings of the non-member employees and paid to the representative organization.

While this provision does not specify a penalty or disciplinary action which may be taken against teachers who are not members of the employees' representative organization, and who refuse to allow the board to deduct the agency shop fee from their salaries, the validity of such a provision has been judicially tested. The United States Supreme Court has upheld a Michigan statute which authorized an agency shop fee. The only caveat recognized in this case was the recognition that the non-member could receive a refund of that portion of the agency shop fee which was used for purposes other than collective bargaining. 10/

The right of teachers to strike has, with great regularity, been denied by the courts in Illinois. The problem will continue to be bothersome until rights and obligations are clearly delineated in the statutes, and, judging by other states, even this may not clarify this problem.

The first case to bear directly on the right of teachers to strike was handed down by a Connecticut court in 1951. 11/ The court held that it was legal for teachers to organize as labor unions, but that the right of teachers to organize did not carry with it all the privileges for which employees in the private sectors may unite. In explanation of this decision, the court said:

> Under our system, the government is established by and run for all of the people.... The profit motive inherent in the principle of free enterprise, is absent. It should be the aim of every employee of the government to do his or her part to make it function as efficiently and economically as possible. The drastic remedy of the organized strike to enforce the demands of unions of governmental employees is in direct contravention of this principle. It has been so regarded by the heads of the executive department of the states and the nation....

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10. Abood v. Detroit Board of Education, 431 U.S. 209, 97 S.Ct. 1782 (1977).
11. Norwalk Teachers Association v. Board of Education, 138 Conn. 269, 83 A. 482 (1951).

A similar posture has been adopted by the Illinois Supreme court which has held teachers cannot legally strike or engage in conduct deleterious to the efficient operation of schools. In a case where the court enjoined both the strike and picketing of schools, the court stated:

> ... there is no inherent right in municipal employees [teachers] to strike against their governmental employer, whether federal, state, or a political subdivision thereof, and that a strike of municipal employees for any purpose is illegal. 12/

While this opinion also held that picketing for the purposes of fostering and supporting an unlawful strike against a school district was not a constitutionally protected "free speech" activity, and could be subject to restrictive regulations and enjoinment by a court, more recent opinions have recognized two separate types of picketing by teachers. While courts will enjoin teacher picketing that is disruptive, or which impedes or obstructs educational services provided by schools, 13/ non-disruptive informational picketing by teachers which does not interfere with a school's providing educational services has been upheld. 14/

Teachers appear to be entitled to undertake part-time employment while engaged in full-time service as teachers. Teachers are specifically authorized to accept part-time or temporary employment in private or parochial schools so long as such employment is in no way connected with or subsidized by their public school employment, and that such employment does not interfere or conflict with their public school duties (Sec. 24-1.1). Many other civil rights of teachers are being tested, and teachers can generally be sure of the same rights as other citizens.

An additional "civil right" of teachers in Illinois has been recognized by court action. In this instance, a public school teacher was legally employed in a district, and the teacher's spouse served as a member of the district's board of education. An Illinois court held that the simple existence of this marital relationship was not a conflict of interest. Therefore, such teachers are not in jeopardy of los-

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12. Board of Education of Community Unit School District No. 2 v. Redding, 32 Ill.2d 567, 207 N.E.2d 427 (1965).
13. Board of Education of Danville Community Consolidated School District 118 v. Danville Education Association, 59 Ill. App.3d 726, 376 N.E.2d 430 (1978).
14. Board of Education of School District No. 196 v. Parkhill, 50 Ill. App.3d 60, 365 N.E.2d 195 (1977).

ing their teaching positions on the basis of this type of marital relationship. 15/

Illinois law gives a school board the authority, following election by the voters, to buy or build residences for teachers and administrators. In the event that such property is not needed as residences for teachers, it may be rented by the school board (Sec. 10-23.1). Although legal, this power is rarely exercised. There has been little litigation regarding the required place of residence for teachers. Illinois law stipulates that residency within any school district shall not be considered in determining the employment, compensation, retention, promotion, assignment, or transfer of any teacher (Sec. 24-4.1).

Leaves of Absence.--The statutes authorize school boards to grant leaves of absence to teachers under certain specified conditions. These leaves are of two general types: (1) those that are mandatory on the part of the board, and (2) those that are discretionary, i.e., those that the board may, but is not required to, grant.

a. Mandatory leaves of absence.--By statute, the board is required to grant a leave of absence to a teacher who is elected to serve in the General Assembly if the teacher requests such a leave (Sec. 24-13). Likewise, it is required to grant a leave of absence when requested to do so to a teacher who is engaged in the military service (Sec. 24-13). The contractual continued-service status of teachers on either of these two types of mandatory leave is not affected thereby. Furthermore, one employed to take the place of a teacher granted one of these types of leave does not acquire contractual continued service while substituting for the teacher on leave (Sec. 24-13).

At this point it is well to point out again that all school boards are required to grant to all full-time teachers sick leave at full pay in an amount of no less than 10 days per year. If a teacher does not use sick leave during the year for which it was granted, it shall accumulate to the credit of the teacher. The minimum that a board must permit a teacher to accumulate is 90 days at full pay (Sec. 24-6). If, by reason of change of boundaries or the creation of a new district, a teacher is transferred to a new or different district managed by a different board, leave which had been previously accumulated is not lost. However, when a teacher changes employing boards at his or her choice, no accumulated sick leave transfers.

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15. Hollister v. North, 50 Ill. App.3d 56, 365 N.E.2d 258 (1977).

b. Permissive or discretionary leaves of absence.--In addition to those leaves which a school board is required to grant, it may, at its option, grant the following types of leaves:

1. It may grant a leave of absence with full pay to a teacher in the district, for a period of not more than one year, to teach "in a foreign State" under the provisions of the Exchange Teacher Program provided for under Public Law 402, 80th Congress. In such a case it may employ a teacher from that "foreign State" with or without pay to teach in the place of the teacher granted leave (Sec. 21-1).

2. If a teacher so requests, a board may grant a leave of absence so that the teacher may accept employment in a Department of Defense overseas dependents' school. Such a leave may not exceed the period of time for which such a teacher is employed or for five years, whichever is the lesser. A teacher, while on such leave, shall not lose contractual continued-service status. Likewise, the teacher shall continue to receive service credit earned for promotion, salary increments, leaves of absence, and other privileges based on years of service or employment. The person employed to take his or her place is not eligible for contractual continued-service status (Sec. 24-13.1).

3. A school board may grant a sabbatical leave of absence to a teacher, principal, or superintendent. Such a leave may be for a period of time not less than four months nor in excess of one school term. No teacher may receive such a leave more often than once every six years. When granted a sabbatical leave, the applicant must agree in writing that if at the end of the leave, he or she does not return to the district and perform contractual continued service for at least one year, all sums paid during the leave will be refunded to the district unless return is prevented by illness or incapacity.

If, however, a board of education grants a sabbatical leave, pay of the person on leave shall be at the same base salary the teacher would have received had the teacher remained in the district, except that there may be deducted from the salary the amount necessary to pay the substitute. However, in no case shall the teacher receive less than the amount provided as a minimum salary in Section 24-8 of The School Code of Illinois or one half of the teacher's base salary--whichever is greater. The board is required to pay the teacher's contribution to the retirement system while that teacher is on leave, computed on the annual full-time

salary rate under which the teacher last received pay (Sec. 24-6.1).

Statutory Limitations Placed upon Teachers

Illinois law contains a number of limitations placed upon teachers, some of which are not commonly known even to experienced teachers. As previously indicated, teachers are required to demonstrate some minimum evidence of professional growth to avoid revocation or suspension of their certificates (Sec. 21-23). Salary increases may be withheld for failure to comply with reasonable board rules and regulations respecting professional growth. 16/

Perhaps the most serious limitation placed upon teachers is that of limited employment. Most school districts in the state operate on a school calendar that meets the minimum number of school days required by law or that barely exceeds it. Recent changes in the law have not measurably lengthened the period of employment for teachers. School administrators, custodians, bus drivers, and clerks may be employed the year round, but teachers commonly are not employed to teach in the summer months. For the city of Chicago, the statute by implication limits employment for most teachers to the school year rather than the calendar year (Sec. 34-18). For downstate teachers, The School Code of Illinois provides that some teachers may be employed during the summer months where schools operate on a tuition basis. Summer schools may be organized to provide and conduct courses in subject matters normally embraced in the program of the school during the regular school term (Sec. 10-22.33a). An extended school year, beyond nine months supported with tax funds and no tuition, can be provided if the voters of a school district approve an annual tax to be levied by a school board for summer school educational purposes (Sec. 17-2.1). Exceptions are provided that will allow 12 months' employment for superintendents of schools, principals, and other non-teaching personnel, whether or not there is summer school (Sec. 10-19). This curtailed work year is perhaps one of the greatest deterrents to the recruitment and retention of teachers, since these annual periods of unemployment are reflected in total salary. Despite the fact that many districts divide the percent earned in 9 months over 12 payments, teachers' salaries are paid for 9 months' work.

Another limitation upon teachers is that of assignment. Boards of education may freely assign and reassign teachers

16. Richards v. Board of Education, 21 Ill.2d 104, 171 N.E.2d 37 (1961).

to positions that they are qualified to fill. As early as 1882, an Illinois appellate court ruled on a teacher's refusal to accept reassignment. In this instance a white teacher refused to accept a teaching assignment to a building attended by "colored" pupils. The court ruled that the school board could freely assign and reassign teachers to buildings within the district. 17/ Some negotiated contracts limit the amount of transfer of teachers that a board may accomplish, but the law gives the power to boards of education.

There are other prohibitions placed upon teachers in respect to teaching. One of these has to do with experiments upon animals. The statute reads as follows:

> No experiment upon any living animal for the purpose of demonstration in any study shall be made in any public school. No animal provided by, or killed in the presence of any pupil of a public school shall be used for dissection in such school, and in no case shall dogs or cats be killed for such purposes. Dissection of dead animals, or parts thereof, shall be confined to the classroom and shall not be practiced in the presence of any pupil not engaged in the study to be illustrated thereby (Sec. 27-14).

The law prohibits teachers and administrators from practicing segregation in the schools. After the filing of a complaint with the State Board of Education that any pupil has been excluded from or segregated in any school because of color, race, nationality, religion, or religious affiliation, a hearing must be held (Sec. 22-19).

A strong prohibition is placed upon teachers as to the time of resignation. No tenured teacher may terminate service after 60 days before the opening of school or during the school year, except by consent of the board of education, without risking suspension of the state teaching certificate for one year (Sec. 24-14).

No teacher may have any interest in the sale, proceeds, or profits of any book, apparatus, or furniture used in any school in which the teacher is employed, except as provided by law whereby the interest of the teacher is the result of authorship or development (Sec. 22-5). This, however, applies only to material which has met the provision of Article 28, which requires compliance with State Board of Education requirements, and has been adopted by a local board of education in compliance with Section 10-20.8 of The School Code of Illinois.

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17. City of Jacksonville v. Akers, 11 Ill. App. 393 (1882).

CHAPTER XII

Financial Facts That Teachers Need to Know

"The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various States. . . . The need is apparent for reform in tax systems which may well have relied too long, and too heavily on the local property tax."—*San Antonio Independent School District* v. *Rodriguez*, 93 S.Ct. 1278 (1973).

Introduction

Nothing so completely confuses the average teacher as the system of financing the schools and how it is explained. Much of the confusion results from partial exposure to facts, while still more confusion results from teachers' not having the opportunity to be exposed to the entire spectrum of financial needs and demands. The story of the blind men who disagreed about the appearance of an elephant because each was allowed to touch a different part of the elephant frequently comes to mind when different persons describe the financial ability of a district to perform a particular task. Thus, the major characteristics of the ways schools in Illinois are financed have been incorporated here to help all who are interested in a genuine understanding of how education is or can be financed in Illinois. If one is interested in calculating aid for a specific district, the annually published booklet State, Local, and Federal Financing for Illinois Public Schools should be used. Revised every year, this free booklet is available from the Office of the State Board of Education in Springfield. To fully understand the funding of public education, one needs to calculate aid for a particular district so that the interrelatedness of attendance, district wealth, and tax rates can be understood.

Budgets

The beginning point for understanding how schools or any complex organizations expend their funds is the budget. According to Webster, a budget is "a financial statement of estimated income and expenses of a country for a period of time; also a plan for financing a government based on such a statement." Through time, the schools have come to develop an annual budget, which coincides with the school year. Although the law gives local boards the power to set the fiscal year, all Illinois school districts, except the Chicago one, operate on a July 1 through June 30 year. Chicago's fiscal year is September 1 through August 31. Some of the misunderstanding of school finance by the public and some school personnel results because the tax collection year is different from the school year. Taxes are usually levied in September of one year and collected from June to November of the next year. As is explained in detail under the "tax year" section of this chapter, this makes budgeting complicated. Budgeting involves planning in advance for income and expenditures, despite the uncertainty of the exact income or the needed expenditures. The budget document becomes at best an estimate of what will happen in a financial way. Boards of education, teachers, and the public should not assume that, be-

cause a budget has been prepared for a particular year, all financial decisions for that year have been made.

The statutes require that each board of education adopt a budget within or before the first quarter of each fiscal year. The only exception is in Chicago, where the board adopts the budget within the first 60 days of the fiscal year. In the remaining discussion of budgets, the exceptions for Chicago will not be cited; however, they can be found in Sections 34-42 through 34-52 of the School Code.

The budget of a school system, if seriously prepared, reflects the direction in which a school system is moving and serves as a financial blueprint for the professional staff. It is customary for the professional staff to prepare a budget not later than the last quarter of the year preceding the one to which it applies, even though it does not have to be adopted until sometime in the first quarter of the fiscal year. The proper involvement of staff in the detailed preparation frequently forces an administration to begin gathering material for a budget six to eight months before it is completed. It is, in fact, not good business to operate a school and spend money before a budget is adopted. A board of education can, with a properly adopted budget, delegate most financial matters to the administrative staff, except for the legal requirement that the board make final approval of all payments and matters such as budget completion.

The budget, whenever it is adopted, must be made available for public inspection at least 30 days prior to final action, and at least one public hearing must be held prior to adoption (Sec. 17-1). The availability of the budget and the notice of the public hearing must be published in a newspaper at least 30 days before the time of the hearing. If no newspaper exists, a notice posted in five of the most public places in the district may be substituted for the newspaper publication. If persons wish to seriously influence a budget, they should start during the planning phases rather than wait until the document is completed and available for the public hearing.

When the budget is completed and adopted, the board of education may make transfers between items in any fund not to exceed, in the aggregate, 10 percent of the fund set forth in the budget. The adoption of any amendment of an item that is more than 10 percent of the fund must follow the same procedure as the original adoption of the budget.

Despite the fact that the state operates on a fiscal year of July 1 through June 30, a local board of education may fix its own fiscal year. In practice, as has been pointed out, all boards of education in Illinois, except in the city of Chicago, operate on the same fiscal year as does the state. Chicago's use of a different budget year causes much

confusion when downstate districts try to compare costs or understand the Chicago board's action in changing salaries during the school year.

The school budget is an important document, and if any group expects to seriously influence the way schools are financed, it must be interested in the way the budget is developed and in the decisions made during its preparation.

Tax Levies and Tax Collection

A tax levy is the way that a governing board informs a tax collecting agency of the amount of money it needs for the budget year. A levy, or a request for funds, is made in each of the several legally constituted funds for which a district wishes to have taxes collected. As is explained elsewhere in this chapter, all of the funds requested will not be received in a single fiscal year; thus, in the budgeting process, a school board must consider more than one year's levy in planning for a single school year's operation. If one is to understand the fluctuation of the levy and the budget processes, it is necessary to study both over several years.

Although districts seldom limit levies to budgeted amounts, the two do have a relationship. There should not be a limit on levies to the exact amount of a budget, since collections are not made in a single year, but levies should be related to current and future budgets so that over a period of time, tax income meets the revenue needed for expenditures. Tax objections have been raised and sustained where levies exceeded budgets enough to raise serious questions.

A levy may, but need not, be made for each fund in which the statutes authorize a local board to collect taxes. The decision as to which funds are to be used and the amount of money which is needed in each fund is made by the board of education of the school district. In Section 17-11 of The School Code of Illinois, a sample of the form to be used by the board to make its levy in each fund is shown. The board of education approves the levy by resolution and specifies a dollar amount. Tax rates, discussed under each fund later in this chapter, control the maximum that can be collected. But, rates are not mentioned when the levy is made. A good administration, or board, which needs the maximum it can get will be sure that the levy is large enough to get all the funds allowable. House Bill 1048 of the 1981 session requires a public hearing if the aggregate levy for a given year exceeds the previous year's extension by more than 105 percent. If the district needs all the funds it can secure, it can

project, or estimate, the new assessed value before it determines the amount of the levy, thus insuring an extension of the maximum tax rate.

Making an adequate levy to meet anticipated needs, or to get as much as possible to meet as many needs as possible, is a decision which the board, as well as those who wish to influence board decisions, should weigh heavily before the board makes a levy in any or all funds. Regular levies in all funds must be submitted to the county clerk on or before the last Tuesday in December in school districts having populations of less than 500,000. In school districts having populations of 500,000 or more (Chicago is the only such district in Illinois), the levy may be made within 60 days after September 1.

When a new or an increased tax rate is authorized by referendum and/or legislative action for the education fund or for the operations, building, and maintenance fund after the annual budget has been adopted, the board may make a supplemental budget and a supplemental levy by a vote of a majority of the full membership of the board. The supplemental levy apparently can be made anytime, as long as it is made in time for it to be placed on the tax collector's books. As a practical matter, it is difficult to get the tax collected if the levy is made after January 1. Some authorities have ruled that a levy cannot be amended after this date.

The Tax Year

Much confusion results because of the time it takes to assess property and to collect property taxes in Illinois. All real property is assessed as of January 1. The assessment of all parcels of real property added together makes up the total assessment for tax purposes for a year. Misunderstandings arise because the assessments made on January 1 and April 1 constitute the assessment on which taxes will be collected from June to November of the following year. The appeal process takes 12 months, and the extension and collection process, another 6 to 10 months.

Property assessment and income to districts from property taxes has been confounded because of the repeal of the personal property tax and its replacement by a special form of the state income tax. In essence, almost every district had some of its assessment based on the assessed value of personal property. The 1970 constitution, Article IX, Section 5, repealed the personal property tax for individuals and mandated that the General Assembly repeal the corporate personal property tax by 1979. Because some tax jurisdictions collected all or nearly all of the corporate personal property tax,

while other taxing jurisdictions did not, replacement has been complicated.

As the corporate personal property tax has been replaced by state funds, the state has had to substitute a revised personal property equalized assessed value in state aid calculations. (Where the assessed value or equalized assessed value of property is used in this chapter, it means the real property assessment plus the calculated revised personal property assessed value.) After 1983, the amount of the revised property assessed value will be clear, unless there are further legislative changes. The best source of information for school districts to learn how current figures are arrived at is the annual report of the State Board of Education, called State, Local, and Federal Financing for Illinois Public Schools.

The calculation of assessment to be added to real property assessment because of the personal property tax replacement is important, since it is used to determine state aid. The payment of dollars by the state to replace personal property taxes formerly collected by the districts is a significant income for most districts.

Thus, as an example, the assessment made in January, 1981, makes up the 1981 assessment on which taxes will be collected during the period of time from June, 1982, until about November, 1982. As is obvious, some of the taxes will be received in the 1981-82 school year, while the remaining and probably largest collections will be made in the 1982-83 school year. This assessment process accounts for the state's using the 1980 assessments to base its payments for the 1981-82 year, thus making it difficult for the layperson or teacher to understand the tax rate and amount available to be spent by the school district.

The collection of taxes for one year's operation, if done properly and promptly, will always be from two tax years. The law requires one-half of the property tax to be paid by June 1. The other half is due September 1. This means that one fiscal year closes, and another begins between the two collections. Many times the first installment will be late, which causes further difficulty in determining school tax collections. Provision has been made by the General Assembly for Cook County to begin advance collection in March and to authorize other county boards to pass a resolution to accelerate tax collection by requiring the billing of one-half of the previous year's taxes for collection on June 1. When boards use this authority, timely collection of the approximate amount of taxes is insured.

Each school district should explain collection practices in its area to its taxpayers, thus avoiding mistrust that sometimes occurs when taxpayers see unusual balances. Many

misunderstandings between school districts and taxpayers develop because the taxpayers do not understand that the tax year and the fiscal year are different.

Some confusion results because some boards insist that funds collected in June can only be used for the following fiscal year. There is no legal precedent for this philosophy. Money should be accounted for when it is received.

Taxing Powers of Boards of Education and Boards of Directors

Introduction.--School boards, by legislative enactment, operate with many separate funds created for specific purposes. Each specific fund must be accounted for with a specific set of books for both income and expenditures. The operating funds that are specifically provided for and for which taxes are levied are the education fund; the operations, building, and maintenance fund; the capital improvement fund; the transportation fund; the summer school fund; 1/ the bond and interest fund; the rent fund; the Illinois municipal retirement fund; the tort immunity fund; the working cash fund; the fire prevention and safety fund; 2/ the special education building program fund; 3/ the area vocational education building program fund; 4/ and tort judgement bonds. 5/, 6/ In addition, special site and construction funds are created for each specific building project as a depository for specific funds from the sale of bonds for the project and for making payments as the project is completed. There are no taxes levied for the construction fund.

A levy, or a request for funds, as described earlier, is made in the case of each statutorily prescribed fund in which a tax may be levied and which a district board of education desires to make use of as a source of support. Suffice it to say, the real local tax load imposed on taxpayers is found by totaling all taxes levied under all the individual funds. The power of a school district to tax to secure money in the funds is subject to limitations similar to those placed on other local governmental bodies. Generally, there

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1. Accounted for in the education fund account.
2. Accounted for in the operations, building, and maintenance fund account.
3. Ibid.
4. Ibid.
5. Accounted for in the education fund account.
6. State Board of Education, State, Local and Federal Financing for Illinois Public Schools, 1980-81, p. 56.

are three types of power to levy taxes which the statutes will spell out as they relate to each fund.

1. Some taxes may be levied under power granted directly to the board of education.

2. Some taxes or increases in taxes may be levied by a board of education, subject to a "back door" referendum (explained in a subsequent section of this chapter).

3. Some taxes may be levied only if approved by a referendum which authorizes either the levying of the taxes or the increasing of taxes beyond the limits which the board can levy as described in No. 1.

To be certain of its power to levy taxes, and of the circumstances under which it may do so, a local board must constantly be aware of the actions of the General Assembly. The amount of taxes that a board may levy without a referendum (as in No. 1, given previously) sets the limits of the board's power to act without voter approval. The amount of taxes that a board may levy without voter approval is that which the General Assembly believes is absolutely necessary for the minimal operation of a school program.

When the General Assembly believes that a tax is desirable but that the voters should be able to prevent its levy if they object strongly, it usually gives the board the power to levy the tax, but it also provides for a "back door" referendum. A back door referendum, as mentioned in No. 2, describes the circumstances under which the public may force the board to have a referendum on some action it has taken. This is accomplished by a petition submitted by the appropriate number of persons. (The required number of signatures of voters needed for such a petition varies from 10 to 20 percent; in some cases, the statutes prescribe a minimum number.) A properly executed petition can force a vote on a proposition when the statutes provide for such a challenge. Only when the statutes provide for this back door referendum does the public have the legal right to challenge board action in making levies. When challenged by a legal back door referendum petition, the board must hold a referendum on the matter, or it must withdraw its action.

No. 3, as previously mentioned, usually gives the board the opportunity to ask the taxpayers for permission to provide any reasonable funding. The taxes that a board may levy, if given permission by a direct referendum, are many, and the amounts set in the law are generally considered to be in excess of what the taxpayers are willing to approve. When a particular tax rate maximum by referendum has been reached and more money is needed, the board has generally

been successful in persuading the General Assembly to raise the maximum that can be allowed by a referendum. Thus, the real limit on the power to tax for most educational purposes is exercised by the local electorate.

Specific Taxes That Can Be Levied for Each Particular Fund.--The tax rates that may be levied in each of the three categories described previously for any fund are subject to change by statutory enactment at any session of the General Assembly. (As a result, this section of the book should be checked against The School Code of Illinois after each session of the General Assembly.) As a way of explaining the power to tax in as uncomplicated a manner as possible, each major fund is described separately in the sections that follow. Despite any explanation, all board members, teachers, and administrators should know that the real local educational tax load imposed on the taxpayers is the total of the taxes levied by the district in all funds.

Since 1973, when the basic support for the common school fund, or the distributive fund, was changed, boards of education have been allowed to use resource equalizer funds to support any local funds that are considered operational. (All operational funds qualify in all districts currently because the distributive fund is totally dispersed through the resource equalizer formula.)

The need for a less cumbersome method of budgeting and accounting for funds will become obvious as the discussion of how funds are currently used progresses. However, until some additional statutes are enacted, districts will continue to operate with many of the funds which are described in the following pages.

a. The education fund.--The chief operational fund for each school system is the education fund. 7/ It is used as a general fund, and most operational expenses can be paid from it. Primarily, it is used for the instructional program, plus all administrative costs. Legally, operational costs (technically these include all utilities and janitorial-related expenses) shall be paid from the education fund, unless they are transferred to the building fund by board resolution or action (Sec. 17-7).

This transfer of operational expenses from the education fund to the building fund can be made at any time the board passes a resolution to do so. However, once a transfer has been made to the building fund, the expenses must continue

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7. For a full explanation of this fund, see State Board of Education, Illinois Program Accounting Manual for Local Agencies, revised edition, 1980, p. 3-1.

to be paid from the building fund at least until the beginning of the next fiscal year, following the enactment of a resolution by the board to transfer the expenditures back to the education fund. (Sec. 17-7). This power to transfer expenses from one fund to another is a source of much confusion when boards of education and teachers begin negotiating contracts for the next school year. Establishing the exact amount of money available to support the education fund is not an easy task. For example, janitors' salaries may be paid from the building fund, while all other operational expenses are still being paid from the education fund. Other similar adjustments can be made as long as the transfer back to the education fund takes place at the beginning of the next fiscal year. It is, of course, simple to make the transfer of expenditures continuous by not repealing the resolution. The current tax rates for the education fund are described in the following:

1. A board may levy, without challenge, the amount authorized for 12-grade districts on July 9, 1957 ($1.00 per $100 of assessed value), and the amount authorized for dual districts on June 30, 1965 ($0.65 per $100 of assessed value). In practice, districts have usually been able to go to the tax levies described in No. 2 without serious challenge. However, there have been exceptions, and challenges have been filed (Sec. 17-2.2).

2. Without a referendum, but subject to a back door referendum, a board of education may levy $1.60 in a 12-grade district and $0.92 in a dual district per $100 of assessed value. 8/ (These two rates are subject to different back door referenda. See No. 1 for amount that cannot be challenged.) (Sec. 17-2)

3. By direct referendum, the board of a 12-grade district may levy up to $4.00, and the board of a dual district may levy up to $3.50 per $100 of assessed value (Sec. 17-3).

4. A board may levy a special tax of $0.15 per $100 of assessed value for summer school, if it is approved by the voters in a referendum. If this plan for raising funds is used, the summer school must be tuition free to the

8. In one school district, the date of passage of Section 17-2 allowing the $0.92 has caused one taxpayer to successfully challenge the payment of the $0.02 above the $0.90.

pupils (free in the same sense that the regular school is free) (Secs. 17-2 and 17-2.1). In addition, a tax rate of 0.05 percent may be levied to provide free textbooks, if the funds are approved by the electorate. Both of these special taxes are handled by the education fund (Sec. 28-14). 9/

b. The operations, building, and maintenance fund (OBM fund).--This fund, sometimes referred to as the building fund, is primarily used for the operation and maintenance of the physical facilities of the school district. 10/ This fund is subject to the transfer restrictions of operational expenditures discussed in the preceding section on the education fund. In addition to the regular income and expenditures of the fund, a number of special levies have been authorized in this OBM fund for specific purposes.

The current tax rates that may be levied for the OBM fund are described in the following:

1. A board in a 12-grade district may levy up to $0.25 per $100 of assessed value, and in a dual district, it may levy $0.1875 per $100 of assessed value (Sec. 17-2.2).

2. Subject to a back door referendum for the amounts in excess of the amounts shown in No. 1, a board may levy up to $0.375 for a 12-grade district and $0.25 for a dual district per $100 of assessed value (Sec. 17-2). 11/

3. By authority of a direct referendum, a 12-grade district board may levy up to $0.75, and a dual district board up to $0.55 per $100 of assessed value (Sec. 17-5).

4. Additional levies may be made as follows:
   (a) A board may levy $0.05 per $100 of assessed value without a referendum, if the funds are needed for a period of time sufficient to pay the cost of alteration or reconstruction to meet requirements for the state-

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9. All of these supplemental special taxes are accounted for in the bookkeeping for the education fund.

10. For a full explanation, see State Board of Education, Illinois Program Accounting Manual for Local Agencies, revised edition, 1980, p. 3-1.

11. These maximums for a unit district may be exceeded because of special conditions existing when consolidation takes place (Sec. 17-5).

required fire prevention and safety program. The board can only use this tax revenue to pay for this program, but it is a part of the OBM fund. This tax may be increased to 0.10 percent, if approved by referendum (Sec. 17-2.11).

(b) A board may levy a special tax of $0.02 in a dual district, and $0.04 in a 12-grade district per $100 of assessed value without a referendum for five years to provide buildings for special education purposes. These tax monies may accumulate up to eight years, but, except in rare cases, they must be spent for the purpose stated in the resolution to accumulate (Sec. 17-2.2a).

(c) A board may also establish a capital improvement fund by a $0.06-per-$100-of-assessed-value levy, if it is approved by a referendum for a specific purpose (Sec. 17-2.3).

(d) A board, as a result of a direct referendum, may levy a tax rate of not more than $0.05 per $100 of assessed value for an area vocational building program. This tax may accumulate for five years (Sec. 17-2.4).

All three of the above special fund levies are accounted for in the OBM fund levies but must be spent for the purposes specified. They are in addition to the rates authorized for regular OBM fund use described in Nos. 1, 2, and 3.

c. The transportation fund.--State reimbursements for regular pupil transportation have been changed so that the state participates on the basis of an equalization formula. The basic concepts of the formula are:

1. The state will pay the cost of transporting eligible students (those living 1.5 miles or more from school or in areas where conditions are such that walking constitutes a hazard to the safety of children, in districts not having adequate public transportation for the pupils), less the districts' share or qualifying amount. (This is $0.05 for high school districts, $0.06 for elementary districts, and $0.07 for 12-grade districts per $100 of assessed value.) No district will be entitled to less than $16 per year per pupil in average daily membership transported (Secs. 29-2 and 29-5).

2. The cost of transporting eligible students shall be

the cost used to determine the state's share. The state's share is the cost of transporting eligible pupils less the qualifying amount (Sec. 29-5).

3. Boards must operate all transportation from revenue provided by local taxes for transportation and from state funds. They may, however, borrow from the education, the OBM, or the working cash fund. In addition, interest income from the working cash fund may be transferred to this account.

4. Districts may claim 80 percent of the cost of transportation for vocational and special education students who qualify for payment by the state, although a proration of transportation funding by the state may reduce the actual amount received by a district (Secs. 14-13.01b and 29-5).

Taxes for the transportation fund are set by the state or are authorized by a referendum. No back door provisions affect this fund.

1. A board is authorized to levy up to 0.12 percent for transportation (Sec. 17-2 [5]).

2. By referendum, a board may be authorized to levy any amount to be used exclusively for transportation (Sec. 17-4).

This formula was the first attempt in Illinois to help low ability districts, as measured by assessed value per pupil, more than rich districts in meeting the cost of transportation. A 1982 amendment provides that if the amount appropriated for transportation reimbursement is sufficient to fund total claims, the State Board of Education shall reduce each school district's cost and flat grant amount proportionally to make total claims and appropriations equal. Although the purpose of this amendment is to make the state pay its full share of transportation costs, in fact, local districts will have to make up the difference from local funds.

d. The municipal retirement fund.--This fund is designed to pay the school district's share of the municipal retirement fund, which consists of social security and retirement benefits for non-certified employees. It is not necessary for a district to make a special levy for paying this retirement, since the district's share may be taken from the fund which pays the salary. However, if a tax is levied, it must be for whatever amount is needed to pay the retirement which the district must pay. The tax to cover the district's cost for this purpose may be levied in this fund without re-

strictions, except that money in this fund may not be spent for other purposes. 12/

e. The bond and interest fund.--This fund is used to pay the principal and interest on long-term obligations. 13/ It is maintained as a separate fund, or funds, to protect the bondholders. The taxes necessary to meet the obligations of the district for bonds are extended each year by the county clerk. A certified copy of the resolution providing for the issuance of bonds and the levying of a tax to pay them must be filed by the school district in the county clerk's office in each county in which a part of the district is located. The county clerk will then extend the taxes each year (Sec. 19).

The tax rate used to pay off bonds and interest is dependent upon a number of variables. The principal, the assessed value of the district, the rate of interest, and the time over which the bonds are to be paid are the most significant determiners of tax rates in the bond and interest fund. Under the constitution in effect prior to 1971, no district could issue bonds to be paid over a period longer than 20 years, but bonds could be issued to be paid in a shorter period of time. The 1970 constitution allows bonds to be issued and paid over a period of time not to exceed 40 years (Art. VIIIb).

The maximum amount of bonds that can be issued by a district for all purposes is controlled by statute since the enactment of the 1970 constitution. Whereas the constitution of 1870 limited the indebtedness of a school district, no specific limit was set in the constitution of 1970. The School Code of Illinois in Section 19-1 sets a debt limit of 6.9 percent of the assessed value of the district as the maximum indebtedness for districts having grades kindergarten through 8, or 9 through 12, and 11.8 percent as the maximum indebtedness for districts having grades kindergarten through 12. From time to time, the General Assembly authorizes new purposes for which bonds may be issued. The State Board of Education publication, State, Local, and Federal Financing for Illinois Public Schools, should be checked to be sure of any new authority or changes in the rules of handling bond sales or issues.

f. The rent fund.--This fund was created to allow a district to rent a building from the School Building Commission, which is now the Capital Development Board. (Sec. 35). A

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12. For a full explanation, see State Board of Education, Illinois Program Accounting Manual for Local Agencies, revised edition, 1980, p. 3-2.
13. Ibid., pp. 3-1 and 3-2.

district that has used all its ability to borrow or is within $5,000 or less of the maximum, or which has voted to sell bonds up to within $5,000 of the maximum, could, by a referendum, be authorized to collect a tax to pay rent on a building built by the commission and leased by the district. The fund serves to allow a district, with the help of the state, to have a school building even when the debt limit has been reached.

The School Building Commission has become a part of the Capital Development Board, but the rent fund is still used to pay the rentals. When the full amount is repaid, the title to the building is transferred to the district.

The rate of repayment is 6 percent each year so that the district returns all capital in about 16.66 years (16.66 x 0.06 = 0.9996). When all costs are paid to the state, the state transfers the title to the district. This is an interesting phenomenon--since the local school district is a creature of the state, the state already owns the building. There are no maximum tax rates. Whatever tax is necessary to pay the state, the amount agreed upon can be levied. The fund works much like the bond and interest fund, and monies collected may not be commingled with other monies.

g. The working cash fund.--This fund can be used by a board to loan money to the education, the OBM, or the transportation fund (Sec. 20). The fund can be created by:

1. A levy of $0.05 per $100 of assessed value which the board has authority to levy.

2. The issuing of bonds subject to a back door referendum (petition by 20 percent of the voters in 10 days).

3. A combination of nos. 1 and 2.

Funds in the working cash fund cannot, by taxes and sale of bonds, exceed 75 percent of the taxes last extended for educational purposes. Once a fund has reached the maximum amount through bond sale, taxes, and interest earned, it may, however, continue to grow from interest earned from investment.

The working cash fund may be abolished by a board of education at the end of a school year, and if the board of education wishes, it may again create a working cash fund at any time. When the working cash fund is abolished, all assets become a part of the education fund. (The exception is in Chicago, where working cash fund levies are controlled by special statutes.)

h. The site and construction fund(s).--When bonds are sold for a particular building purpose, a district may establish a construction fund for the project, or it may establish a single construction fund for more than one project and keep separate records on each.

No taxes are levied for a construction fund. The sources of money for the construction fund are the sale of bonds, the interest earned on money invested from the fund, and the premiums on bond sales. 14/

i. The tort immunity fund.--The Tort Immunity Act (Ch. 85, Sec. 9-107) authorizes a local governmental entity to levy a tax at such a tax rate as to produce a sum sufficient to pay the cost of purchasing insurance to cover liabilities under the Unemployment Insurance Act, workmen's compensation, and the Occupational Disease Act. There are no rate restrictions on the power of the board to make a levy in this fund. Money in this fund may not be used for other purposes. This authority has been expanded to allow districts to tax for liabilities incurred under the Unemployment Insurance Act.

All of these funds are confusing to the public, and they frequently are not understood by members of the profession, as well as by members of the school board. They have developed, however, as new needs for funds have been established, and rather than increase already existing taxes, legislators have set up identifiable separate funds to assure the use of taxes for the purpose levied. Many good arguments exist for consolidating all or nearly all operational funds into a single fund. The formula for state aid explained later in this chapter provides added pressure for the consolidation of funds.

Teachers and taxpayers who try to understand how schools are financed are constantly confused by the multiplicity of funds for varying purposes. Communication barriers could be reduced significantly if funds could be simplified.

When Is a School District Broke?

As boards of education and teachers' organizations negotiate, one of the most perplexing problems faced by them is a common or agreed upon concept of whether or not money is available for purposes that each side wishes it to be used for. Most of the arguments about whether money is available are in fact philosophical rather than factual or legal. If

14. Ibid., p. 3-2.

the philosophical position is that a board should never borrow money, then one set of values prevails. If, however, the opposite philosophical point of view is taken, that a board should, by every means possible, borrow funds to spend during the current year, quite a different set of values exists. Positions at these two extremes and at all points in between are taken by different persons.

Apart from philosophical positions, groups sometimes take positions that they know will not be sound in the long run. If, for instance, a teacher group feels that a board of education is not aggressive enough in going to the community for permission to raise taxes, the group may deliberately attempt to force spending beyond income to put the board in the position of having to go to the public for a tax increase to supplement income.

Whatever the motivation, it is essential for school personnel and board members to understand the means by which a district may legally secure funds in addition to the regular means of supporting the funds discussed above. "When must a school district cut expenditures?" and "When is a district broke?" are good questions.

The answers to these questions are often given to the public by boards, teachers, and administrators because of a philosophical commitment rather than a legal or factual understanding. Some persons say a school district is broke when it sells tax-anticipation warrants; others have different ideas but seldom base them on legal facts; while still others just remain confused. Of course, there are many who try to understand. Some of the confusion is because the law is not totally clear. To put this into perspective, one probably needs to change the term "broke" so that the question reads, "When has a district spent all the money which it can get?" The answer to this question involves considerable explanation.

To determine the limit of funds, one must know what rates the taxpayers are willing to vote in. With most funds, after the minimum rates which the General Assembly gives the local board power to levy have been exhausted, citizen support is necessary to increase the tax income of a district. (These limits have previously been explained under each fund.) Few school districts have ever reached the point where they could not get additional money if the people were willing to vote in additional taxes. Whenever districts have levied the statutory maximum allowed after a referendum in a particular fund, the General Assembly has generally raised the maximum.

Complications arise due to the power of the local board to spend money and to secure money for educational expenditure when, because of its own desire or some other demand, such as a negotiated contract or a court order, it needs funds that the electorate has not authorized. The statutes

enacted by the General Assembly and compiled in The School Code of Illinois control what a board may do and what taxes it may levy.

A school district may, after the proper budget procedures have been followed, spend all funds on hand, plus those secured from local, state, and federal sources, plus those which the law allows it to spend in excess of revenue received. There are a number of ways that funds may be secured in anticipation of revenue.

A district may, through the use of tax-anticipation warrants, borrow up to 85 percent of any taxes levied for any major fund, i.e., the education fund; the operations, building, and maintenance fund; the transportation fund; and the bond and interest fund. In practice, this limit usually cannot be borrowed from a commercial lending firm, since such a firm wants a safety margin; but a district can borrow 60 percent or slightly more from these sources, and then, if necessary, it can use the working cash fund to loan the approximately 25 percent remaining. This securing of funds is not a legal indebtedness since anticipated tax revenue is pledged for its repayment. 15/

In addition to borrowing against the regular September levy during a school year, a district can levy for the following year and borrow against it. As an example, a district may borrow all of the money it is authorized to borrow against the levy it made for 1982-83 by April of 1983. As soon as the board elected in April of 1983 is sworn in and adopts the 1983-84 budget, it can make the 1984 levy and sell tax-anticipation warrants against it. In effect, this lets a board of education anticipate two years' revenue before it reaches the limit of its tax-anticipation power. Whether this procedure can be repeated for more than the two years is subject to question. The wisdom of financing in this manner, unless absolutely necessary, is questionable, but the practice is legal and has been carried out by school districts.

There is given to each local board of education the power to incur indebtedness for operation as well as the power to secure anticipated revenue as previously described. The statutes provide that teachers must be paid at least monthly (Secs. 24-1 and 24-21). If funds are not available, teachers' orders are the only orders that a board may issue (Sec. 10-18). Teachers' orders issued when money is not available become indebtedness and must be counted against the debt limit of the district. Some districts actually issue

15. Leviton v. Board of Education, 374 Ill. 594 (1940). (More than 10 other cases cover this same point.)

teacher's orders rather than use tax-anticipation warrants before the teachers' orders. The maximum indebtedness that a district may incur is 6.9 percent of the value of the taxable property in dual districts and 13.8 percent in unit districts. In recent sessions of the General Assembly, new legislation has made it possible for a district to borrow up to 75 percent of the state aid allocated to it for the year and to borrow up to 75 percent of its entitlement to receive personal property tax replacement. These additional authorizations to borrow must be done within the 85 percent debt limit already explained.

A district may issue tax-anticipation notes with the same limitations and amounts as tax-anticipation warrants. The tax-anticipation statute does not increase the amount of funds that a district may borrow, since it specifically states that tax-anticipation notes may not be issued in any year that tax-anticipation warrants are outstanding. The use of notes rather than warrants can spread out the time of repayment, but it does not serve to make more funds available.

In summary, a district board may secure funds by anticipating all tax levies up to 85 percent of the total amount, and in any one year it may, either by warrants or notes, borrow against two levies if proper procedures are followed. A board may, in addition, issue teachers' orders until it reaches its debt limit and may then, as time passes, issue additional orders as bonds are paid off in combination with assessment changes.

To reach the indebtedness level described would use up all of the authority a board has to expend money and would make it difficult for a district to ever again establish itself to operate without extensive borrowing. State aid increases or funds from other sources sometimes help districts to re-establish a cash position; but the law provides a way to secure funds to re-establish a cash position if the community will allow it. In a district, the board of education may, subject to a back door referendum, issue bonds for the purpose of paying orders which have been issued for the wages of teachers or claims against the district (Sec. 19-8). The limit on the power of a local board in this case is that the citizens of the district can, after the resolution to issue bonds is passed by the board of education, force a vote by getting 10 percent of the voters to sign a petition within 30 days (the back door referendum) and then petitioning for a referendum. If no petition is presented to the board within 30 days, the board may sell the bonds to pay indebtedness so long as it stays within the debt limit.

The power of a local board to operate schools, for a while at least, at an expenditure level greater than the income level is indeed great. Many districts have, for as many as 10 years, spent more than they have taken in and continued

to operate within the limits set by Illinois law. Any statement that a board cannot authorize some legal action because it cannot possibly get the money when it has not exhausted the preceding methods has to be based on self-imposed and thus changeable limits on board policy and not on a legal prohibition.

As a practical matter, no board should ever exhaust all of its power to secure funds before explaining the process to its citizens. It is, of course, fine to have all of the funds needed for providing programs, but almost no district can do this. The position which can be defended to both taxpayers and educators seems to be to have a district spend about half of the year's levy, whether or not it is received. By statute, one-half of the real estate taxes are due on June 1, although they are frequently not collected by that date. The district which budgets to establish this position can, in the short run, have the leeway to expand programs or in other ways increase expenditures without levying new taxes or jeopardizing the operation of the schools.

To operate schools in such a way that substantial sums of money must be borrowed increases the cost of operation, by the amount of interest paid, without increasing educational offerings. With the current high cost of borrowing (interest rates), the use of anticipation warrants or teachers' orders must be recognized as adding to expenses without improving education. When money is plentiful, schools are able to borrow at nominal rates, and thus borrowing might be desirable. Given the current high rates, a cash position can be justified much more easily than it could have been when rates were low. Boards must consider the cost of borrowing as they establish their philosophy concerning balances and operational funds. In fact, with the present requirements for boards of education to invest funds quickly at high interest rates, many districts receive large sums of money from interest income.

Bonds and Reasons for Issuing Them

Introduction.--Bonds are used by school districts in most states for raising money for some permanent improvements that will benefit future students as well as those currently enrolled. The payment of bonds is thus spread over a number of years, and as the facilities are used, the parents of the users share in their cost. In Illinois, funds are borrowed for these same long-range purposes, but as has been explained in a previous section, bonds can be issued to pay off current obligations as well.

There are three types of bonds that schools in Illinois may issue.

1. Those which may be issued only if authorized by a referendum.

2. Those which a board may issue but which may be challenged by a back door referendum.

3. Those which a board has the power to issue without challenge.

Bonds issued by a board of education may range in denomination from $100 to $5,000, and may be payable for any period of time not to exceed established statutory limits. (Although the constitution of 1970 allows bonds to be issued that will mature in no more than 40 years, most statutes still contain limitations which establish 20 years as the limit. This needs to be cleared up by legislation.) Thus, boards may make bonds payable in even amounts for any number of years up to the maximum, or they may vary the payment schedules so as to pay more in some years and less in others. This makes it possible to fit the payments for a particular bond issue to other district debts. Frequently, no bonds will be retired during the early years following an issue so that a previous issue can be retired. Great flexibility exists concerning when payments will be made. Some districts retire bonds in less time in order to make their bonding power available sooner and in order to save interest charges. In rapidly growing districts, the practice of issuing bonds that will be retired over a relatively short period of time makes the tax rate high but allows for quick recovery of borrowing power.

Bonds That May Be Issued If Authorized by a Referendum. --School directors may issue bonds based on a majority vote in a referendum for "building or repairing schoolhouses or purchasing or improving school sites" (Sec. 19-2). Boards of education may issue bonds to borrow money

> ... for the purpose of building, equipping, altering, or repairing school buildings or purchasing or improving school sites, or acquiring and equipping playgrounds, recreation grounds, athletic fields, and other buildings or land used or useful for school purposes or for the purpose of purchasing a site, with or without a building or buildings thereon, or for the building of a house or houses on such site of the school district, for residential purposes of the superintendent, principal, or teachers of the school district (Sec. 19-3).

Bonds Subject to a Back Door Referendum.--Bonds may be issued to pay teachers' orders and claims against a school district. The board may pass a resolution declaring that the expenditures were for authorized school purposes and that the intention of the district in issuing bonds is for the purpose of paying the teachers' orders and claims. After proper notification, the public has 30 days in which it may force an election by presenting a petition signed by 10 percent of the voters requesting such an election. If no petition is presented, the bonds may be issued after the 30 days. If a petition is presented in proper form, an election must be held, and a majority must approve before the board can sell the bonds.

Bonds may be issued to create a working cash fund or to increase the money in the fund. The bonds may be payable over a period of time up to, but not to exceed, 20 years. A board may, by resolution, sell bonds for the working cash fund, but the resolution is subject to a challenge by a back door referendum. If a petition is presented, signed by 20 percent of the voters within 10 days, a referendum will need to be held before the bonds can be issued (Secs. 20-1 through 20-7). If no such petition is presented, the board may issue and sell the bonds.

Bonds That May Be Issued on Board Authority.--Because of the division of assets, resulting from the creation of a new district, the school board of a newly created district must, within 90 days following the regional board of trustees' order, pay any amounts due other districts. If funds are not available from other sources, the board may sell bonds up to the debt limit.

Refunding bonds are bonds issued to refund some existing indebtedness. The School Code of Illinois (Sec. 19-16) provides that refunding bonds may be issued for the following purposes:

1. To refund bonds prior to their maturity;
2. To refund unpaid matured bonds;
3. To refund matured coupons evidencing interest upon unpaid bonds;
4. To refund interest at the coupon rate upon its unpaid matured bonds that has accrued since the maturity of those bonds;
5. To refund bonds which by their terms are subject to redemption before maturity; and

6. To refund other valid and subsisting evidences of indebtedness that are due and payable.

The issuing of bonds may seem remote to the classroom teacher, but in a real sense, any bonds sold become competitors for tax funds for operation. Because of this, teachers must be as concerned about bond issues as about any other expenditure of tax money.

Accumulations of Surpluses in Funds

A perplexing problem for all taxing bodies is the problem of tax objections. Tax objectors have disapproved of technical failures by boards of education and the improper use of certain power, but most often they have resisted taxes' being greater than necessary. Because there are circumstances where it is desirable and actually saves money to have a balance on hand, boards which can do so have sometimes accumulated funds. Tax objectors have found this a fertile field for litigation.

In 1946, and then in a supplement in 1947, the major tax objectors--the railroads--and the Illinois Association of School Boards reached a series of agreements that relate to tax objection. 16/ Although these agreements have no legal authority, since their development they have served as a basis of negotiations to prevent many law suits. In connection with the accumulation of funds, the agreements provide that the following formula shall be used to determine the reasonableness for the district's accumulation of funds:

> When the district has funds on hand, which together with the current resources and taxes already extended and in the process of collection, are sufficient to enable the school district to operate for at least two years without borrowing. An average of the last three years of actual expenditures is considered a fair measure of annual school needs in the absence of changed circumstances or requirements. It was agreed that objections may be made to so much of any levy as is necessary to maintain such two year provision.... (p. 4, Supplement)

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16. School Tax Objections in the State of Illinois, published by the Illinois Association of School Boards, January 29, 1946, and a first supplement published August 1, 1947. Refer to these two publications for many points of agreement and disagreement concerning tax objections.

In the Supplement in 1947, the following additional items were accepted:

1. That annual school needs for education purposes be measured by twice the average expenditure for the last three years, or twice the amount of school expenditures for the last preceding year, whichever is the greater.

2. That continuing rising costs suggest that need for increasing the average expenditure as worked out by the formula by at least 5 percent.

3. That such average expenditure be stated in even hundreds of dollars (next highest), instead of in actual dollars and cents. (Example: if the formula produces a figure of $123,456.35, use $123,500). School authorities and others have strongly resented our attempt to hold a district down to an amount expressed in definite dollars and cents.

4. That when a school district is required to issue tax-anticipation warrants year after year to meet educational needs, it seems very doubtful that the so-called "cash balance on hand at the close of the school year" represents anything more than a misnomer. A few of the railroads refrain from filing "excessive cash balance" cases and this policy is strongly recommended to all Illinois railroads.

5. That building fund expenditures vary widely from year to year, not only as to specific projects involving repairs and improvements, but to bond payments as well. Therefore, in many cases the formula as applied to educational needs is not entirely adaptable to the building fund. However, the three-year average will prove out in most cases, providing no definite commitments have been made in the current year for extensive additions and improvements to buildings and grounds. We offer the suggestion that the building fund calls for special treatment and consideration (pp. 4-5, Supplement).

Although the legal weight of these agreements has not been established, they have served to prevent excessive tax objection suits. Each person interested in school finance should be aware of them for negotiating with tax objectors

and for developing policy about accumulating funds. These two publications have many other points of agreement and disagreement over items related to tax objections and should be studied carefully.

State Financial Support for Public Schools

Introduction.--In addition to the money secured from local taxes, the only sources of significant amounts of money available to pay the cost of public education in Illinois are the state and federal governments. The state supplies money both for general support of the regular program and for the support of specific programs when they are incorporated into the school program. This support for specific programs is usually referred to as categorical aid, while the general support comes from the common school fund and the part paid to local districts is called, technically, the distributive fund. The federal government has actually supplied less than 10 percent of the operational funds for the Illinois public schools for many years, and this money is generally in the form of categorical aids. (Federal aid will be discussed briefly in a later section.)

Boards of education have considerably more to say about the way general support money is used than they do about the money received in categorical aids. In fact, the receipt of categorical aid, in most cases, depends upon a board's providing or having already provided additional money for the specific program from other sources, while a board may use general support money at its discretion.

In recent times, certain categorical funds have been attached to mandated programs. This means that a board must put up the amount of money necessary to operate the program if the categorical funds do not pay the full cost. Aid for special education is an example of this type of categorical aid. Many other programs that the state wishes to have provided are supported by granting funds to be used for specific purposes. Frequently, the types of programs supported in this way vary. A later section treats this topic specifically.

One specific complication of most categorical programs that causes problems is the way the money is paid. Generally, the school district must operate the program, pay all costs, and then, at the end of the year, file for reimbursement. This causes problems for most districts--especially those that have problems with cash flow. Much confusion among teachers and boards sometimes develops over this failure to receive appropriated money when it is needed to operate programs.

The Common School Fund.--In Illinois, the common school fund is the source of general support for school district operation. It receives money from appropriations by the General Assembly from what is called the general fund, which is supported by state taxes. While, technically, some tax money is earmarked for the common school fund, this is so insignificant that in practice the money is considered as all coming from general revenue.

Loosely speaking, the system of distributing money to local school districts has been referred to as a formula. It is, in fact, a system based on specific, objectively measured data, calculated by several formulae.

The amount of money distributed to school districts per child has been changed at each regular session of the General Assembly since 1965, and undoubtedly, it will continue to change in the future. As a result, the following is designed to help the readers understand how aid is provided. (For specific aid in calculating exact income of a district, one should see the State Board of Education's annual publication, State, Local, and Federal Financing for Illinois Public Schools. The booklet is free upon request made to the State Board of Education office in Springfield.)

The common school fund has two purposes: (1) to pay those claims or obligations referred to as "prior claims" and (2) to provide general support money to local districts. Money so used is referred to as the "distributive fund." In the past, it was the practice to pay all prior claims in full and then distribute what was left through the distributive fund. This is how the term "prior claims" came to be used. In recent changes in the way appropriations are made, this practice has been eliminated. However, the term continues to be used to separate the two uses for money being paid into the common school fund. Separate appropriations are made for prior claims funds and for distributive funds.

a. Prior claims.--Those state and local school expenditures paid for by the common school fund, which are classified as prior claims, are as follows:

1. Money paid into the Illinois Teachers' Retirement System (Sec. 19-7).

2. Money paid into the Chicago Teachers' Retirement System (Sec. 18-5).

3. Salaries of superintendents of educational service regions (Sec. 18-5).

4. Salaries of assistant superintendents of educational service regions (Sec. 18-5).

5. Money paid into the supervisor expense fund (paid to superintendents of educational service regions for supervisory expenses) (Sec. 18-6).

6. Tuition for orphanages (Sec. 18-3).

The prior claims funds require a substantial appropriation of state money, but the bulk of this money does not go directly to individual schools. Actually, schools only receive money from Item 6, and only those schools eligible under Sec. 18-3 of the School Code get money for this purpose. Items 1, 2, 3, 4, and 5 illustrate ways that the state pays some of the cost of operating the educational enterprise directly. The term "prior claims" is a throwback to former years when these funds had first claim to public school appropriated funds. In recent years, the appropriations have been made by line items, and there is no priority for these funds.

b. The distributive fund (1927-1973).--The "distributive fund" is the title given to money used to reimburse local school districts for the general support of their schools. An understanding of the way school districts can secure money from this fund is necessary if individuals are to understand school finance.

A look at the history of the distributive fund is essential to understanding it. From 1927 to 1973, it supported a system of funding known as "foundation level." In theory, a level of dollar support that was needed to operate a good educational program was determined, and then a formula was enacted into law that would, when applied, yield that support from both local taxes and state money, or aid. In 1927, the first foundation-level formula was developed. It provided state aid, or support, based on the number of elementary school students only. In 1939, the formula was changed to include support for high schools as well. The basic principle of supplementing local tax money with some assistance to provide a foundation level was, in fact, not changed significantly from 1927 until 1973.

In the beginning, in 1927, each school was entitled to receive a $9 flat grant for each pupil, along with other aid, the amount of which was determined by the use of a formula. No school was permitted to receive a total of state aid in excess of $34 per pupil, which may be thought of as a foundation, support, or equalization level, and no district was to receive less than the $9 flat grant per pupil in average daily attendance (ADA). By 1973, this had changed so that, generally speaking, each district was guaranteed a flat grant of $48 per pupil, with a top limit or maximum set at $520 in equalization aid, plus 19 percent of the amount granted by the state as its share. In no case, however, was a district

to receive less than $48 (the amount of the flat grant) plus 19 percent thereof.

Specifically, this plan provided that each district that taxed itself at a minimum qualifying rate--1.08 percent of assessed value for K-12 grade districts and 0.84 percent for dual districts with a weighted average daily attendance (WADA) 17/ of 100, and 0.90 percent for those with a WADA of less than 100--would be eligible to receive a maximum of $520 plus 19 percent of what the state paid. Again, no district would receive less than the $48 flat grant plus 19 percent of that amount. This plan was abandoned even as an option in 1980.

This foundation plan, or system, of figuring state aid, while it gave aid to poorer districts, was far from ideal. It definitely gave more aid to poorer districts than to wealthier ones. The 19 percent add-on operated in favor of the poorer districts, but any increase in the tax rate did not give proportionate benefits to the poorer and the wealthier districts. An increase of 1 percent in excess of the qualifying rate gave the district with a $20,000 assessed value per WADA pupil an increase of $200 per pupil, but, in the case of the $50,000 assessed value per WADA pupil districts, it would be $500 per pupil. Thus, the poorer districts would have to increase their tax rates 2.5 times as much as the wealthier districts in order to get the same amount of money per pupil in taxes. When one recalls that the average expenditure per pupil in Illinois for 1972-73 exceeded $1,000, it is easy to see that districts with extremely low assessments per pupil found it almost impossible to have even the state average available to spend per pupil.

Funds other than the education fund and the transportation fund had, until 1973, always been totally dependent on local taxes for all their money. Thus, even when maximum tax rates were levied in these funds, poorer districts found it difficult to secure sufficient money. Conversely, wealthier districts found it relatively easy to support these funds.

By 1973, in addition to a choice of the systems of calculation just commented on, certain districts could claim additional aid if they qualified on the basis of size. This additional aid resulted from a plan for increasing the WADA of districts for part of the state aid calculation. In districts

17. WADA is, in reality, the average daily attendance (ADA) weighted so as to give different values for kindergarten, elementary, junior high, and secondary pupils. In figuring the WADA of a district, one gives each kindergarten pupil in ADA a value, or weight, of 0.5; each elementary pupil, one of 1.0; each junior high (grades 7 and 8) pupil, one of 1.05; and each secondary pupil, one of 1.25.

having 10,000 to 29,999 WADA, the WADA as used in calculating the amount due under the basic $520 formula was increased by adding 4 percent to the actual WADA; in districts having 30,000 to 200,000 WADA, it was 12 percent; and in districts having more than 200,000 WADA, it was 16 percent. This increased WADA could only be used when the $520 formula was used. The 19 percent add-on could not be added to the increase, because of the increase granted in WADA. This meant that the size factor caused these districts to have to calculate their aid both with and without the increased WADA and then to combine the two calculations in a special way. (For details of the way this was done, one should see the publication State, Local, and Federal Financing for Illinois Public Schools for the years before 1979.)

In addition to the above alternatives, districts could claim additional money when 5 percent or more of the students had parents or guardians employed by the state of Illinois, or any of its agencies, working in any state office building maintained and operated by or for the state. Such a district was entitled to claim one-half of the difference between the calculated operating expense per pupil and the general state aid furnished under the several formulae described. This system has been abolished.

c. The distributive fund (1973-1974).--In the 1973 session of the General Assembly, House Bill 1484, dealing with the basis for allocating funds to local districts, was enacted. It amended the system described previously and added a completely different option. One of the principles that is important to keep in mind regarding this bill is that it allowed a district to file for its funds under an amended version of the 1972-73 law or under a new system known as the resource equalizer, which will be explained.

The amendments of 1972-73 changed the old formula in two specific ways. The 19 percent add-on was changed to 25 percent. This guaranteed that every district would earn 6 percent more aid than it was able to earn earlier. The second major change was that in counting WADA, any district could add a weight of 0.45 for each Title I student residing in the district. (Title I students are defined as those counted for Title I of the Elementary and Secondary Education Act of 1965, as counted in the 1970 census.) This option of using the 0.45 Title I count could not be used in calculating the amount of aid if the size factor was used in determining WADA. After 1974, the size factor was eliminated, and a district wishing to file under the amended version of the 1972-73 formula could not use it. One other change that affected a number of districts was that districts were prohibited from receiving an increase in appropriations of more than 25 percent of the funds received in 1972-73. As written, this limited the increase not only from Title I weighting but from all other increases as well.

The most significant change in the distributive fund in 1973 was to provide a completely new alternative for districts to use in claiming state aid. In fact, 90 percent or more of the students in the state have, since 1973, been supported by this option, known as the resource equalizer. In 1980, with some further changes in the law, all districts used the basic resource equalizer formula to calculate their support from the state. (For details regarding the resource equalizer, one should consult the Appendix.)

The resource equalizer was phased in over several years (the full amount of calculated aid was not paid until 1977), and this fact alone confused many persons.

The basic premise of the resource equalizer was to guarantee to each district the same basic wealth to support each student in the weighted count up to a level that would finance an adequate education. (This contrasted to the foundation concept that had for many years provided a minimum program. However, the foundation formula did not have to operate on this basis--it just did, both in Illinois and in most other states that used it.)

The resource equalizer was originally intended to let each community determine its level of spending for education by the tax rate that was set. The simple basic premises on which it was built were:

1. Set a level of assessment at which a reasonable tax rate would support an adequate education for all students without state help.

2. Let the state pay to the local district the difference in the district's assessment times the actual tax rate and the calculation of the ideal assessment and the actual tax rate of the district.

Table XII-1 which follows is designed to show how this worked, using the 1973 level of funding for K-12 school districts. Most K-12 districts in Illinois taxed at or above 2 percent, so the range of support was generally somewhere between the two examples. The concept of letting the local tax rate determine state aid has been repealed.

The basic formula, or formulaes, that determines the state aid for Illinois schools is complicated by a number of factors. The first of these is that Illinois has three types of districts: K-8, 9-12, and K-12. Second, the first and each subsequent draft of the basic formula have tried to compensate for the extra cost for concentrations of low income students. (This was partially recognized before 1973 through a school district size factor in the foundation formula.) The real problem with this is that there is no real way to decide the exact amount of cost needed for low income pupils.

TABLE XII-1. Aid per TWADA Student for K-12 Districts with Different Assessed Values per WADA Student and Different Tax Rates, Using the Resource Equalizer (1982-83)*

	Assessed Value per Pupil in WADA				Amount Received by District		
District	Guaranteed	Local	Share on Which State Pays (b - c)	Tax Rate	From Local Taxes (c x e)	From State (d x e)	Total (f + g)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A	$42,000	$20,000	$22,000	2%	$400	$440	$ 840
B	$42,000	$20,000	$22,000	3%	$600	$660	$1,260
C	$42,000	$10,000	$32,000	2%	$200	$640	$ 840
D	$42,000	$10,000	$32,000	3%	$300	$960	$1,260

*The tax rates and the support levels that are a part of the formula are given in the Appendix. Using the resource equalizer formula, the state will pay to each district the amount calculated for it.

A third factor has been pressure to reorganize all districts into K-12 districts, exerted through financial aid to K-12 districts at a higher level than that given to the K-8 and 9-12 districts, or the dual districts.

The Appendix shows the basic formula for calculating the resource equalizer for the 1982-83 school year, the way that districts determine their aid when the basic formula is calculated to pay less than 13 percent of the support level, and the formula for calculating the Title I weighted average daily attendance (TWADA) of a district. Tables A-1 and A-2 show the same type of calculations for the 1982-83 school year as Table XII-1 shows for the 1973-74 school year. A comparison of Table XII-1 and Appendix tables A-1 and A-2 will give the serious student an opportunity to observe the results of the formula change.

The variables in the formula shown in the Appendix and those which any session of the General Assembly can choose are:

1. The assessment level that the state will support.

2. The tax rate that the state will guarantee for state aid purposes. (If the local district does not levy the full rate, it, of course, will not get the local dollars.)

3. The weightings in the formula for grade level and concentration or other weightings that might be added.

4. The minimum level of taxes that must be levied to participate in the program.

The support level for 1982-83 is approximately $1,657.68. That is, the state guarantees this figure if the local district collects the tax rate prescribed. Or, a third way is to say that the state will pay its calculated share (using the Appendix formula) to the district if it collects the minimum local taxes. Only if the tax rate used in the calculations or a greater amount is collected locally will the district have the full $1,657.68 or more per TWADA student.

The formula change in 1973 left some areas that needed change untouched. The major problem relating to equalizing state support for the three types of districts came about because prior to 1973, the General Assembly had allowed secondary districts the same taxing power to operate four grades as it had allowed elementary districts to operate eight grades plus kindergarten. In addition, the permissive taxing power of the combined elementary and secondary schools

was greater than that allowed for K-12 districts. 18/ No changes were made in the taxing power without a referendum or with a referendum. As a result of the advantage in local taxing power, the secondary districts were able, with greater local taxing power and equal support from the state, to operate with fewer problems than the other two types of districts. Sooner or later, the solution will include adjusting tax rates so that equal opportunity is provided to all districts to compete.

State aid is paid to districts for the previous year's TWADA or for an average of the past three years. The higher of these two averages is used for calculating state aid. Each district will use an average of the best three months of attendance for 1981-82 and subsequent years to establish the basic WADA. However, previous years were and will continue to be counted, based on the best six months of attendance. Further weightings of Title I pupils will be calculated as shown in the Appendix.

School districts normally are paid 0.0416 of their claims twice monthly. Some years there are complications that cause the early monthly payments to be late, but payments are normally made 24 times per year. The tax rates and the support levels that are a part of the formula are shown in the Appendix. Using the formula, the state will pay to each district the amount calculated for it.

Categorical Aids

It is difficult to describe all categorical aids that go to districts because they change almost annually. There is, however, some need to consider the effect of several factors on categorical aids. The general term "categorical aid" basically applies to any assistance sent to a district from state or federal sources when the reason for sending that aid is to encourage the district to offer a specific service or program. Always in the past, there was a great argument, with justification, that most categorical aids favored the more affluent districts, unless the aids had some equalization built into them. Seldom has the wealth of a district been considered when these programs have been set up. If, however, all districts which make the same effort

18. The original bill would have required 9-12 districts to reduce their taxes as state aid escalated, but this part of the original legislation was repealed. There was no attempt to increase elementary and unit district tax rates to proportional levels.

get approximately the same funds from the resource equalizer, then the validity of this argument may diminish. It may require a re-thinking of the equity problem as it relates to categorical aids.

Another point to be considered is when should the state stop supporting a service or program which it persuades local districts to begin? If a categorical program becomes a part of every school district's program, should it be considered like all other programs? This issue will be debated, but it should be kept in perspective with the other types of assistance which are furnished to districts.

The major categorical programs available to districts in Illinois are: (1) continuing education (adult education); (2) special education; (3) the gifted program; (4) transportation; (5) vocational education; (6) bi-lingual education; (7) the free breakfast-lunch program (furnished by the state in addition to the federal program); and (8) the free textbook program (limited but still available). As vested interests lobby successfully, these programs will be changed or new programs will be added. The chief effect on school districts will be to cause the districts to offer new programs, thus reducing the revenue available for other programs. Almost no categorical aid ever pays the full cost of operating the program it subsidizes or encourages. Even federal categorical programs cost local districts in extra administrative and support expenses.

Federal Aid

Most federal aid that comes to districts is channeled through the state and is frequently mixed with state categorical aids. Examples of this type of combined aid are adult education and vocational education. Other federal funds such as national defense education funds and the largest source of funds--the Elementary and Secondary Education Act--are administered primarily through the State Board of Education. Some grants are available upon specific application, but most eligible schools can find out about these. For larger school systems, a person working full time to develop grants can, generally, more than pay his or her way. The federal funding of specific programs is under serious question as this is written. The best estimate of the situation is that states will have much more to say about which programs receive fewer federal dollars as programs develop under block grant proposals now before Congress.

In addition to local taxes, other funds can serve to support programs or to expand offerings. Good administrators keep boards properly informed about these funds. Because

federal funding changes so rapidly, it will not be described in detail here.

Concluding Statement

The complicated nature of funding schools in Illinois has only been outlined in this chapter. For details, one must go well beyond these generalizations. Since change may take place each time the General Assembly meets, interested persons must keep abreast of these changes, by checking on the basics of this chapter each year.

Appendix

THE RESOURCE EQUALIZER FORMULA

$$G = TWADA \times T \times (AV_g - AV_i/TWADA)$$

where

G is the state grant; GSA is the guaranteed level of state aid.

TWADA is the Title I* weighted average daily attendance.**

T is the district's tax rate for operating purposes, which was formerly based on actual tax rates collected by each district; however, the statutorily provided rates for use in the formula are as follows:

$2.92 per $100.00 assessed value for unit districts
$1.90 per $100.00 assessed value for elementary districts
$1.10 per $100.00 assessed value for secondary districts

State aid is not paid when elementary districts do not tax at $1.28 per $100.00 of assessed value and when a unit district does not tax at $2.18 per $100.00 of assessed value except that there is a one-year exemption to this

*TI is the Title I count for individual districts (i) and for the state(s).

**WADA is the weighted average daily attendance for individual districts and for the state, adjusted as follows: 0.5 for each pupil in kindergarten, 1.0 for each in grades 1-6, 1.05 for each in grades 7 and 8, and 1.25 for each in grades 9-12.

rule statutorily provided for certain districts in 1982-83.

AV_g is the guaranteed assessed value per TWADA for each type of district as follows:

$ 56,769.86 for unit districts***
$ 87,246.31 for elementary districts
$150,694.18 for secondary districts

AV_i is the assessed value per TWADA in the individual district.

Method of calculating aid for districts when their equalized assessed value (EAV) per TWADA is less than 87 percent of the support level:

$$TWADA = WADA_i + TI_i \left[\frac{\frac{TI_i}{WADA_i}}{\frac{TI_s}{WADA_s}} \right] \$0.53,$$

But TI may not exceed 0.625 x number of Title I students in district

For districts whose EAV per TWADA is equal to or greater than 87 percent of the guaranteed EAV per TWADA, the following formula will be used:

$$GSA/TWADA = \frac{(0.87 \times \text{guaranteed EAV/TWADA})}{\text{district EAV/TWADA}} \times (0.13 \times \text{maximum per TWADA})$$

No district will receive less than 0.07 x the maximum per TWADA.

***The State Board of Education may adjust these figures up or down to fit the exact appropriation annually.

TABLE A-1. Aid per TWADA Student for K-12 Districts with Different Assessed Values per TWADA Student at a 2.25% Tax Rate, Using the Resource Equalizer (1982-83)

	Assessed Value per Pupil in TWADA				Amount Received by District		
District	Guaranteed	Local	Share on Which State Pays (b - c)	Tax Rate	From Local Taxes (c x e)	From State (d x 0.0292)	Total (f + g)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A	$56,769.86	$53,000.00	(NIL)	2.25%	$1,192.50	$ 116.04*	$1,308.54
B	$56,769.86	$25,209.89	$31,559.97	2.25%	$ 567.22	$ 921.55	$1,488.77
C	$56,769.86	$10,000.00	$46,769.86	2.25%	$ 225.00	$1,365.68	$1,590.68
D	$56,769.86	$70,000.00	(NIL)	2.25%	$1,575.00	$ 116.04*	$1,691.04

*Flat grant equals 7% of base support level of $1,657.68.

TABLE A-2. Aid per TWADA Student for K-12 Districts with Different Assessed Values per TWADA Student at a 3.5% Tax Rate, Using the Resource Equalizer (1982-83)

	Assessed Value per Pupil in TWADA				Amount Received by District		
District	Guaranteed	Local	Share on Which State Pays (b - c)	Tax Rate	From Local Taxes (c x e)	From State (d x 0.0292)	Total (f + g)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A	$56,769.86	$53,000.00	(NIL)	3.5%	$1,855.00	$ 116.04*	$1,971.04
B	$56,769.86	$25,209.89	$31,559.97	3.5%	$ 882.34	$ 921.55	$1,803.89
C	$56,769.86	$10,000.00	$46,769.86	3.5%	$ 350.00	$1,365.68	$1,715.68
D	$56,769.86	$70,000.00	(NIL)	3.5%	$2,450.00	$ 116.04*	$2,566.04

*Flat grant equals 7% of base support level of $1,657.68.

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